TRANSCRIPT OF RECORD

Supreme Court of the United States

OCTOBER TERM, 1962

No. 111

WILLIAM M. FERGUSON, ATTORNEY GENERAL
FOR THE STATE OF KANSAS, ET AL.,
APPELLANTS,

vs.

FRANK C. SKRUPA, d/b/a CREDIT ADVISORS.

APPEAL FROM THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF KANSAS

FILED MAY 9, 1962

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[fol. 1] [File endorsement omitted]

IN THE UNITED STATES DISTRICT COURT FOR THE DISTRICT OF KANSAS

Civil Action No. W. 2434

FRANK C. SKRUPA, d/b/a Credit Advisors, Plaintiff,

vs.

KEITH SANBORN, County Attorney for the County of Sedgwick, State of Kansas and WILLIAM M. FERGUSON, Attorney General for the State of Kansas, Defendants.

COMPLAINT—Filed June 27, 1961

Comes Now the Plaintiff, Frank Skrupa, Jr. d/b/a Credit Advisors, for his causes of action against the Defendants and each of them alleges and states:

Count I

1. The Plaintiff is an individual and a citizen and resident of the State of Nebraska, his correct post office address being 4503 South 26th Street, Omaha, Nebraska; and said Plaintiff is and at all times material hereto has been doing business under the name and style of "Credit Advisors" as hereinafter more fully set out. The Defendant, Keith Sanborn is a resident of the State of Kansas and the duly elected, qualified and acting County Attorney for the County of Sedgwick, State of Kansas and Defendant William M. Ferguson is a resident of the State of Kansas and the duly elected, qualified and acting Attorney General for the State of Kansas.

2. This action arises under the Constitution of the United States, Article I, Section 10 and Amendment 14, Section 1, as hereinafter more fully appears; and also there is diversity of citizenship between the parties hereto as set out above and the matter in controversy exceeds, exclusive of interest and costs, the sum of ten thousand dollars.

[fol. 2] 3. This action is brought under Title 28 United States Code, Sections 1331, 1332, 2281, and 2284, and is a suit to enjoin the enforcement, operation and execution of a statute of the State of Kansas, Senate Bill 366, 1961 Legislative Session, as being in conflict with the 14th Amendment to the Constitution of the United States, Section 1, and Article I, Section 10, of the Constitution of the United States, and to restrain the defendants, their agents, servants and employees from depriving plaintiff of his property and rights without due process of law, and denying to plaintiff the equal protection of the laws and from enforcing a law impairing the obligation of plaintiff's contracts. Said Kansas Statute is also in conflict with the Constitution of the State of Kansas, Article 2, Section 16, in that the subject of the Bill is not clearly expressed in its title and plaintiff is entitled to an order enjoining enforcement of same on that ground as incidental and ancillary to the substantial federal question herein set out.

4. The 1961 Kansas Legislature passed and the Governor of the State signed an Act known as Senate Bill 366 which reads as follows:

> AN ACT concerning the business of debt adjusting; making certain acts unlawful and prescribing penalties therefor.
>
> Be it enacted by the Legislature of the State of Kansas:
>
> SECTION 1. For the purpose of this act, "debt adjusting" means the making of a contract, express, or implied with a particular debtor whereby the debtor agrees to pay a certain amount of money periodically to the person engaged in the debt adjusting business who shall for a consideration distribute the same among certain specified creditors in accordance with a plan agreed upon. Whoever engages in the business of debt adjusting shall be guilty of a misdemeanor and upon conviction thereof shall be punished by a fine of not more than five hundred dollars ($500), or by imprisonment in the county jail not exceeding six (6) months, or by both such fine and imprisonment: PROVIDED, That the provisions of this act shall not apply to those

situations involving debt adjusting as herein defined incurred incidentally in the lawful practice of law in this state.

SECTION 2. This act shall take effect and be in force from and after its publication in the statute book.

[fol. 3] Said act will be or has been published in the official statute book to take effect June 30, 1961, and unless the defendants are restrained and enjoined from enforcing same, this plaintiff will be irreparably injured.

5. The plaintiff, Frank Skrupa, Jr., is the owner of a business known as "Credit Advisors" with offices in Omaha, Nebraska, and Wichita, Sedgwick County, Kansas; and that said business consists of the business of "debt adjusting" as defined by Kansas Senate Bill No. 366 as set out above; and that said business of this plaintiff by said act and statute is prohibited, declared to be a misdemeanor, and subject to fine or imprisonment, or both.

6. The plaintiff has been engaged in the aforesaid business since September, 1958, and has been engaged in said business in Wichita, Sedgwick County, Kansas, since April, 1960, and since opening an office for business in Wichita, Sedgwick County, Kansas, plaintiff has spent in excess of $20,000.00 for capital improvements and expenses to promote his business and as investment for the future prosperity of the business in the Wichita and Sedgwick County area. The Wichita office of the plaintiff handles an amount of money in excess of an average of $15,000 monthly which is distributed among the specified creditors of debtors availing themselves of plaintiff's services. The plaintiff is engaged in a useful and desirable business which is available to persons who are unable to handle their credit problems without outside financial advice. Plaintiff's employees in all mentioned offices, including the Wichita, Sedgwick County area, are bonded in the amount of $25,000.00 protecting debtors and creditors against loss by embezzlement or dishonesty; and neither the plaintiff nor any of the plaintiff's employees engage in any practices

which in any way are contrary to the public welfare, and the business of debt adjusting and particularly the business conducted by this plaintiff is not inherently immoral or dangerous to the public welfare and may not be absolutely prohibited.

[fol. 4] 7. The defendant, Keith Sanborn, the County Attorney of Sedgwick County, Kansas has stated to plaintiff that he will be obligated to enforce the provisions of said Senate Bill No. 366 against this plaintiff and his employees with criminal sanctions; and the defendant William M. Ferguson, Attorney General of the State of Kansas, having overall supervision of criminal prosecutions in the State of Kansas has indicated that he will contend that said Statute is valid and should be enforced unless restrained and enjoined by a court of competent jurisdiction.

8. The plaintiff has a substantial investment in his business in the State of Kansas as more particularly set out above all of which will be substantially destroyed by enforcement of said Senate Bill No. 366. Certain persons and organizations are already refraining from and refusing to do business with plaintiff because of publicity which is being circulated to the effect that said Senate Bill No. 366 will put plaintiff out of business in Kansas. A number of debtors having contracts with plaintiff are refraining from making further payments through plaintiff because they fear plaintiff will be unable to continue servicing contracts upon said Act becoming effective. Threat of enforcement of said Senate Bill No. 366 and the mere existence of said act deny to plaintiff due process of law and equal protection of the laws.

9. Plaintiff has existing and in force in Wichita, Sedgwick County, Kansas, a total of more than 250 contracts, involving the payment through plaintiff's office of more than $500,000.00 with debtors substantially as described in the said Kansas statute and the threat of enforcement and the mere existence of said Act impairs the obligations of both parties to these contracts.

10. Said Senate Bill No. 366 as applied to this plaintiff arbitrarily and unreasonably deprives plaintiff of valuable

property rights without due process of law, unjustly denies plaintiff the equal protection of the laws and impairs the obligation of existing contracts; and therefore said statute of the State of Kansas is void and invalid being contrary [fol. 5] to the 14th Amendment to the Constitution of the United States, Section 1, and contrary to Article I, Section 10, of the United States Constitution.

11. The title to said Senate Bill No. 366 as passed by the legislature of the State of Kansas is:

> "An act concerning the business of debt adjusting; making certain actions unlawful and prescribing penalties therefor."

but the body of the act as set out above absolutely *prohibits* the business of debt adjusting and therefore the subject of the act is not clearly expressed in the title and the act is therefore contrary to the Constitution of the State of Kansas, Article 2, Section 16, which provides:

> "no bill shall contain more than one subject, which shall be clearly expressed in its title . . ."

and said State Constitutional question is incidental and ancillary to the substantial federal question hereinbefore presented and therefore is subject to determination by this court.

12. The plaintiff has no adequate remedy at law from the threatened acts of the defendants and the law which they seek to enforce. Such threatened acts of the defendants are arbitrarily and grossly discriminatory and repugnant to and violate the Constitution of the United States and the State of Kansas and unlawfully invade the rights of the plaintiff and others and unless said defendants are restrained and enjoined from proceedings to enforce said statutes, this plaintiff will suffer from irreparable harm and injury.

Wherefore, the plaintiff prays that a three judge court be convened pursuant to the provision of Title 28 of the United States Code Sections 2281 and 2284; that the defendants and each of them and their officers, agents and em-

ployees and all persons acting in their behalf be temporarily and permanently enjoined from doing and taking any and all action in the enforcement of said Senate Bill No. 366, 1961 Kansas Session Laws; that the defendants and each of them be restrained by the District Judge from proceeding in the enforcement of the above mentioned statute until such time as hearing can be had on plaintiff's request for a temporary injunction; and that plaintiff have such other and further relief as may be fair and equitable together with costs of this action.

[fol. 6] Count II

1 through 10. Plaintiff realleges and incorporates herein paragraphs 1, 2, 4, 5, 6, 7, 8, 9, 10 and 11 of Count I as paragraphs 1 through 10 of Count II.

11. This action is brought under Title 28, United States Code, Section 1331, 1332 and 2201 because there is an actual controversy now existing between the parties in respect to which plaintiff needs a declaration by the court of the rights of the parties and the validity of a certain statute of the State of Kansas.

12. Defendants and each of them contend that said Senate Bill No. 366 is wholly valid and not contrary to the aforesaid provisions of the Constitution of the United States and the Constitution of the State of Kansas, all of which this plaintiff specifically denies.

Wherefore, Plaintiff prays that this court enter a declaratory judgment, declaring and adjudging that Senate Bill No. 366, 1961 Kansas Session Laws, is in violation of and contrary to the Fourteenth Amendment to the Constitution of the United States, Section 1, and Article I, Section 10, of the Constitution of the United States and the Constitution of the State of Kansas, Article 2, Section 16, and is invalid and void and that the court further declare that the defendants and each of them, their agents, servants and employees and all persons acting in their behalf, have no right to enforce said statute in any way or to threaten enforcement thereof as against this plaintiff and that the

plaintiff have and recover his costs herein and such other and further relief as is fair and equitable.

Ernest McRae, 1020 Central Building, Wichita, Kansas; Weigand, Curfman, Brainerd, Harris & Kaufman, 830 First National Bank Building, Wichita 2, Kansas, By Donald A. Bell, Attorneys for Plaintiff.

[fol. 7] *Duly sworn to by Ernest McRae, jurat omitted in printing.*

[fol. 8] [File endorsement omitted]

IN THE UNITED STATES DISTRICT COURT

FOR THE DISTRICT OF KANSAS

Civil Action No. W-2434

FRANK C. SKRUPA, doing business as CREDIT ADVISORS, Plaintiff,

vs.

KEITH SANBORN, County Attorney for the County of Sedgwick, State of Kansas, and WILLIAM M. FERGUSON, Attorney General for the State of Kansas, Defendants.

Transcript of Hearing on June 28, 1961, on Application for Temporary Restraining Order

Hon. Delmas C. Hill, Chief Judge, presiding.

APPEARANCES:

Weigand, Curfman, Brainerd, Harris & Kaufman, by Mr. Lawrence Weigand and Mr. Donald A. Bell, 830 First National Bank Building, Wichita 2, Kansas, Appearing for Plaintiff, and Mr. Ernest McRae, 1020 Central Building, Wichita, Kansas, Appearing for Plaintiff.

Mr. Keith Sanborn, County Attorney, Court House, Wichita, Kansas, Appearing Pro Se.

Mr. Charles Henson, State House, Topeka, Kansas, Appearing for the Attorney General.

[fol. 10] Be It Remembered, that on this 28th day of June, A.D., 1961, the above matter coming on for hearing before the Honorable Delmas C. Hill, Chief Judge of the United States District Court for the District of Kansas, the parties appearing in person and/or by counsel as hereinbefore set forth, the following proceedings are had:

• • • • • • •

The Court: I expect the attorneys should give the reporter your appearances, please.

Mr. Weigand: Lawrence Weigand, Donald A. Bell and Ernest McRae for the plaintiff.

Mr. Sanborn: Keith Sanborn, Charles Henson, Assistant Attorney General, R. K. Hollingsworth, Artie Vaughn for the State of Kansas, and Mr. Wilbur Geeding, the Chairman of the unauthorized Practice Committee of the Wichita Bar Association, and Mr. John Boyer, the President of the Wichita Bar Association.

Mr. Henson: If it please the Court, I am Charles Henson, Assistant Attorney General, appearing on behalf of William Ferguson, and we would like to particularly note that our appearance today is merely for purposes of the hearing on the application for a temporary restraining order. We do not intend to by our appearance today concede that we are [fol. 10a] proper parties defendant in this action.

The Court: All right. Counsel for the plaintiff may proceed on the hearing for temporary order.

Stipulations of Fact

Mr. Bell: Your Honor, I might briefly cover anything that might be stipulated prior to any witnesses.

No. 1, do the defendants stipulate that Defendant Keith Sanborn is a resident of Kansas; that he is the duly elected, qualified and Acting County Attorney, and the Defendant William M. Ferguson is a resident of the State and duly elected, qualified and Acting Attorney General?

Mr. Henson: We so stipulate, Your Honor.

Mr. Sanborn: We so stipulate, Your Honor.

Mr. Bell: Do the defendants further stipulate that the 1961 Kansas Legislature passed an act known as Senate Bill No. 366, which is set out in Paragraph 4 to plaintiff's Complaint, and that this will become effective by publication in the Statute Book on June 30th, 1961?

Mr. Sanborn: We will stipulate that it will become effective July 1, 1961, Your Honor.

Mr. Henson: Your Honor, we have not had a chance to read the Complaint in this action; however, on counsel's assurance that the statute is fully set out, correctly set out in the Complaint, why, we will stipulate to that.

Mr. Bell: July 1st is agreeable with us. There is no [fol. 10b] difference.

I believe with those we are ready for the first witness.

Frank C. Skrupa, produced as a witness for and in his own behalf, being first duly sworn, testifies as follows:

Direct examination.

By Mr. Bell:

Q. Will you state your name and address for the Court, please?

A. Frank C. Skrupa, Omaha, Nebraska.

Q. You are a resident of the State of Nebraska?

A. Yes, sir.

Q. Are you engaged in business in the States of Nebraska and Kansas?

A. I am.

Q. Would you briefly describe for us the name under which you are operating and the nature of the business?

A. The name under which we operate in both Omaha and Wichita is Credit Advisors, and the nature of the business is financial management of people who are having trouble with consumer debt.

That is, we work out a budgeting program for them and [fol. 11] attempt to help them out over a period of time.

Q. Is it correct to say that in your business you make contracts with debtors, whereby they agree to pay you a

certain amount of money periodically which, for a consideration, you distribute among certain specified creditors in accordance with a plan agreed upon?

A. It is.

Q. Have you read Senate Bill No. 366 which is the subject of this action?

A. I have.

Q. And generally do you consider your business to be within the definition of "debt adjusting" as defined in that Act?

A. I do not.

Q. Well, you consider it to be within the definition as defined in Senate Bill 366, do you not?

A. Yes.

Q. I am not asking you if you consider—

A. (Interrupting) Well, I was under a mistaken opinion there.

Q. Would you tell us briefly how long you have been in this business and when you opened your Wichita office?

A. Why, I have been in the business a little over three years. The office here was opened the latter part of April 1960.

[fol. 12] Q. And since April 1960, will you tell us if you can what you have done to promote this office here and how much money you have invested in the office here?

A. Well, the amount of money invested, not counting this month, has been approximately $24,000.00.

Q. What does that include?

A. Well, that includes salaries, the office, office equipment, and advertising, and such incidentals, and it requires, such incidentals as it requires to run the business.

Q. Can you tell us how much money your office handles, approximately, every month?

A. Well, the average varies but it would be approximately $15,000.00.

Q. We are talking about the Wichita office?

A. Right.

Q. And in fact all of your testimony here goes to your Wichita office operations; is that correct?

A. Yes.

Q. Do you carry any bonds on your employees, surety bonds on your employees?

A. We do. All of our employees are bonded to the amount of $50,000.00.

Q. How much?

[fol. 13] A. Fifty thousand.

Q. In your Complaint it is stated that the bond is in the amount of $25,000.00.

A. Well, I believe that has since been raised.

Q. It is at least twenty-five thousand?

A. At least twenty-five thousand, and in the case of managers it is probably fifty thousand.

Q. Can you tell us how many contracts you have existing in your Wichita office at this time between your firm, yourself, and debtors?

A. Approximately two hundred fifty.

Q. And if these were all paid out to conclusion, approximately how much money would this involve as being paid through your office?

A. Well, if they were paid out to conclusion it would amount to about $2,000.00 apiece.

Q. Or approximately $500,000.00 being passed through your office?

A. Right.

Q. Now can you tell us if Senate Bill No. 366 becomes effective on July 1st and this Court does not enjoin the defendants from proceeding to enforce the Act, can you tell us what effect this will have on your business?

A. Well, in a conversation with the County Attorney, he [fol. 14] informed me that he would be required to enforce the law, that is, we would be required to close down and shut our operation, close our business.

Q. Did he tell you that he would have to file a new complaint every day as long as you continued to operate the business?

A. Yes, he did.

Q. What effect would this have on your business?

A. Well, we would simply have to close the business. I don't see how we could operate under those circumstances.

Q. What would this do to your existing contracts?

A. Well, it would be—it would void them. We would be forced to void them. We wouldn't have any choice. There is no way that we could fulfill our obligations towards our clients if we were not allowed to by this law, by this law being enforced.

Q. Do I understand that you have new clients coming into your office every day?

A. Well, we do. Our business is no different than, basically, any others. We depend on volume. And if we don't get new business every day, that is to say new clients, not necessarily every day but in a manner of speaking, business is just going to dry up.

Q. Could you speak up a little bit?

[fol. 15] A. Yes. I am sorry.

Q. Where do these new clients come from?

A. Well, these new clients come both from advertising and referrals.

Q. This is advertising that has already been accomplished and referrals from people whom you have served previously; is that correct?

A. That is right, we have advertised extensively since we have first been here and, of course, which represents quite an investment, and also we have quite a number of referrals from people who feel that we have done a good job for them and also from creditors.

Q. And if this bill is enforced, if this Court does not restrain the enforcement of this bill pending a hearing by a three-judge court, as you have requested, it is your opinion that you will be unable to service your present contracts and to serve any new clients?

A. That is right.

Q. And you anticipate that there will be new clients who will be seeking your services?

A. Yes, I do.

Mr. Bell: That is all.

[fol. 16] Cross examination.

By Mr. Sanborn:

Q. Mr. Skrupa.

A. Yes, sir.

Q. Are you an attorney at law?

A. No, sir, I am not.

Q. Is anybody in your Wichita office an attorney at law?

A. No, sir.

Q. Have you regularly employed counsel to advise you about your business problems in the conduct of this business?

A. We have employed counsel, yes, to advise us on business problems that do arise, just as any other business does.

Q. My question was specifically whether you have a regularly retained counsel, who advises you on the day-to-day operation of your business so far as it pertains to—

A. (Interrupting) No, sir, we do not.

Q. —so far as it pertains to legal problems?

A. No, sir, we do not.

Q. Then, what advice do you undertake to give persons who come to your office in response to either newspaper advertising or referrals from the sources you have mentioned?

A. Well, our services consist merely of financial advice [fol. 17] and a budgeting system.

We are not engaged in giving any opinions of a legal nature.

Q. That of course would be a conclusion, wouldn't it, sir?

A. Yes, it would.

Q. All right. Now, specifically my question was: what occurs in an interview with an individual who comes to your office seeking a solution to his financial difficulties?

A. Well, when a person comes to our office, he is having problems making ends meet. In many cases because he is a poor manager rather than because he is actually too far over his head in debt.

We take a list of his expenses and then we take a list of his income and his family obligations and how much he

has got going out and how much he has got coming in. Then we try to figure out how much he has available to pay towards his bills on the average of a month, and he pays us so much each payday and we in turn distribute this to his creditors for him in such fashion as to try to keep them satisfied and to get him out of debt over a period of time.

Q. Does it happen that some of these creditors whom you get in touch with are represented by counsel?

[fol. 18] A. Only if it would be a major problem or a divorce problem, something like that.

Q. I am referring to counsel concerning the indebtedness.

A. No.

Q. You never talk with any lawyers concerning the indebtedness of the debtor, then?

A. Only if they are representing a creditor.

Q. That was my question: whether it happened that when you call these creditors, you find or you have found they are represented by counsel.

A. Occasionally.

Q. And when you talk with their counsel, do you discuss the arrangement of terms for the extension of time in which to pay the indebtedness?

A. In most cases the attorney has already set up the amount that he wishes the debtor to pay. We simply go along with it.

For instance—

Q. You don't discuss the amount of the payments then with the attorney?

A. If it is a matter—if an attorney has a judgment and he says he wants twenty dollars a month, we arrange so he gets twenty dollars a month if we possibly can. But we do not determine whether or not the debt is valid or in-

[fol. 19] valid or if the man says that he owes John Jones so much money, we take him at his word.

Q. My question was whether or not you negotiated with these creditors regarding the payment of the debts and extending terms, both as to the amount and the period of time in which repayment would occur.

A. We negotiate to the extent that we say "you will re-

ceive so much a month until the debt is paid in as long as this man is paying us regularly," according to the terms of our contract.

Q. In so doing, do you ever arrange or discuss a proration of the amounts?

A. By that do you mean a reduction of the payment?

Q. Yes.

A. Yes, occasionally.

Q. In so doing, do you when a person comes seeking your services attempt to advise him of the advantages of employing your company to work out a budget plan and then to have him deposit a certain amount each week or month and then have you distribute it; is that what your service consists of?

A. Yes.

Q. And then do you govern the amount of payment which you negotiate or attempt to negotiate with each in-
[fol. 20] dividual creditor on that list by the type of claim it is and whatever, how consistent the particular creditor is, and whatever you can to try to make all his payments cover all of the money?

A. We try to fit the bills within the man's income.

Q. I am just referring to your relations with the creditors. I am speaking specifically, or asking you specifically whether or not the amount each creditor receives each week or each month depends upon the nature and amount of his claim; does it depend on that?

A. Yes.

Q. And does it depend upon the amount of his security?

A. To some degree.

Q. And does it also depend upon the extent of pressure exerted for payment by that particular creditor?

A. We try to satisfy the creditor.

Q. So the answer would be "Yes, it does," would it not, sir?

A. Yes, sir.

Q. And creditors who appear to be in the strongest position to prevent the successful consummation of the plan naturally receive more concessions so that the plan can successfully operate for this consumer; is that correct?

A. Well, sir, I wouldn't say that that is necessarily true, no, sir. We try to be fair to all creditors concerned.

[fol. 21] Q. Suppose he has a car and he wants to hold onto this car and you call up the finance company, do you try to fix it up with them so he can keep the car to work in?

A. Let me say this, sir: that in the case of fixed finance payments, in most cases we just assume that that is the amount the payment is going to be.

For instance, if he is paying the ABC Auto Company fifty dollars a month, we don't try to change that figure except in extreme cases where the man absolutely can not make it, and then we will call and see if they will go along with it. If they don't, why, then there is nothing we can do.

Q. Now, what you actually do is make a written agreement with this debtor whereby he undertakes to make these weekly or monthly deposits with you and then you undertake to use your best effort to persuade the creditors to accept the payments according to the plan, don't you?

A. That is right.

Q. And if you are successful in doing this, you distribute the payments, don't you?

A. That is right.

Q. And for your services you get a percentage of the indebtedness or a scheduled amount, depending upon indebtedness, which is roughly a percentage equivalent, don't [fol. 22] you?

A. Correct, sir.

Q. What are your percentages?

A. Well, it will roughly run anywhere between five and nine per cent of the total overall indebtedness.

Q. Now, what instructions, if any, do you give this client, debtor, as to what he should do if he gets some communication from a creditor or from some attorney while you are working on this debt pooling arrangement? Is he to call you, or what?

A. Well, naturally we want to know about any communication. However, if he feels that there is some matter for negotiation, or if he feels that for some reason he doesn't owe this amount, then we simply suggest that he see an attorney. We do not try to determine whether or not he owes this.

Q. My point was "if." A part of your instructions to him are, are they not, sir, that if he has some problem concerning the operation of the plan and some creditor gets in touch with him, since you are trying to set the plan up, you have him get in touch with you and then you get in touch with that person and try to work it out, don't you?

A. Yes, sir, right.

[fol. 23] Q. You try to get him to take the plan.

Now, this is all in the form of a contract, isn't it?

A. Yes.

Q. Do you have copies of your business forms with you?

A. Yes, we do.

Mr. Sanborn: Could we have those and get him to identify them and put them in, please?

Mr. Bell: I think at this time the plaintiff would like to note for the record that we do not feel that this line of questioning is material to this hearing, since the only question on this hearing is whether or not the plaintiff will be irreparably injured unless a restraining order is granted until the matter can be heard by a full court, and we would object to any further line of questioning on that basis.

Mr. Sanborn: Your Honor, we feel the materiality lies in the fact that the Federal Rules of Civil Procedure provide that when proceedings on a hearing for a temporary restraining order in this class of case, as set out, I think it is in Rule 56, Rule 55 or Rule 65 says what you do—will you forgive me if I am mistaken as to the number—and Section 2284, Paragraph 4, sets out what must be [fol. 24] found as a matter of fact, and one thing in issue here is whether there is any substantial federal question presented and, of course, if there is no substantial federal question presented, then it would not be proper, we feel, for the police power of the State of Kansas to be prospectively stayed by the very great power of judicial restraint, which of course we are not questioning jurisdiction. We are merely saying that the factual content of proof must present to You Honor some substantial federal question.

I would like to have these marked, please.

Mr. Bell: May it please the Court, the particular section of 28 USCA involved, 2284, provides that the Court

may grant a temporary restraining order to prevent irreparable damage, and the statute further provides that any restraining order shall contain a specific finding based upon evidence submitted to such judge and identified by reference that specified irreparable damage will result if the order is not granted.

Now, there is no question in our mind but what there is a substantial federal question. I can't see where this line of questioning goes to that particular issue. Nor do we feel [fol. 25] that it necessarily has to be a specific finding or finding of the Court on this type of an order.

Unless this Court wants to get into all of the merits of this case, we feel that it is simply not proper and we would move to strike all testimony along this line and object to any further proceedings along this line at this time.

The Court: Well, I have no desire to try this lawsuit this afternoon on its merits, I will assure you of that.

Mr. Weigand: Might I suggest, Your Honor, that the purpose in us having this witness testify as to the nature of his business is so that the Court could ascertain that this statute if enforced would put him out of business and would create irreparable damage and that is the only issue, I think, that is now properly before the Court, is as to whether or not this man's business is such that the statute attempts not to regulate it but to prohibit it and put him out of business, and that is the only question now until we can submit to Your Honors, and it has to be a three-judge court that hears even the temporary interlocutory order.

Mr. Sanborn: May it please Your Honor, I don't wish [fol. 26] to stop this hearing part to get into the law, but we believe that the Johnson case in 128 Connecticut, 586, answers his question. The question before the Court is not whether this man will be financially damaged. The damages to be reviewed as to whether or not he will be financially damaged are not what are meant by the words "damages" when someone alleges irreparable damage, but rather it is the nature of the right and whether that right in fact does exist as a property right, which is the subject matter of the Court's inquiry as to whether or not someone will be irreparably damaged. That is why we are

going into the nature of the business rather than the extent of financial investment therein.

The very quotation that we gathered in preparation for this case was "whether damages are to be reviewed by a court of equity "—pardon me—" to be viewed by a court of equity as irreparable or not depends more upon the nature of the right which is injuriously affected than upon the pecuniary measure of the loss suffered." This is the only reason for going into this phase.

The Court: You may proceed.

Mr. Sanborn: Thank you, Your Honor.

[fol. 27] Q. I hand you what has been marked by the Clerk for identification as Defendant's Exhibits "A" through "F", and ask you to state after examination of them whether or not they are a set of your business forms with which you do business within the State of Kansas and in Sedgwick County.

A. They are.

Q. Are they?

A. They are to the extent that there have been some minor changes made in one of these forms—one of these forms is no longer in use.

Q. Would you please pick that out from the others, then, sir.

A. Right.

Q. What number do you refer to as no longer in use?

A. "F".

Q. Thank you. When did you stop the use of "F", sir?

A. It is on the top of the statement there.

Q. I say when.

A. February.

Q. Thank you. Now, was that before or after the case in the District Court of Sedgwick County, Kansas?

A. Which case are you referring to?

Q. No. B-6975, Frank C. Skrupa versus Gordon Oliver, 10 February 1961.

[fol. 28] A. After.

Q. Did the District Court there rule that you had to discontinue use of that?

A. No, sir; the forms, as I recall, were not in question.

Q. Did Judge Kline make any ruling with regard, at that time—

Mr. Bell: We object to this line of questioning unless counsel shows any relevance to the issues in this case.

The Court: Why is it relevant or material?

Mr. Sanborn: It shows that there is no irreparable injury because even before the effective date of this statute the District Court in considering his property interest, and this just goes to the property interest—excuse me—that the District Court of Sedgwick County, Kansas, found that this did constitute the unauthorized practice of law.

Mr. Weigand: If the Court please, the District Court of Sedgwick County, Kansas, decision would not affect this Court's jurisdiction to determine the validity of this statute. And it wouldn't be res adjudicata because it isn't the parties here and it wouldn't be binding and it couldn't be anything more than a citation of a decision of a court [fol. 29] and of a record that was not appealed.

The Court: I am not here today to try the case on its merits.

Mr. Sanborn: All right, sir. We would like to offer, Your Honor—I didn't mean to get off on some other subject, anyway—we would like to offer in evidence the business forms heretofore identified by the plaintiff herein as his business forms.

Mr. Bell: We object on the ground of relevancy to this hearing. Otherwise, we have no objection.

The Court: Overruled. I will admit them. Are they marked as one exhibit, attached together?

Mr. Sanborn: "A" through "F".

The Court: I will admit them.

Mr. Weigand: I thought "F" was no longer in use. Are you going to offer it, anyway?

Mr. Sanborn: Yes, sir. It is about the nature of the business activity.

Q. When you are interviewing the people, you have referred to as clients, do you advise them of their rights relative to their financial problems so that they may make a choice between your plan and the plans provided by the

Statutes of the United States pertaining to wage earners or pertaining to bankruptcy?

[fol. 30] A. Sir, we do not discuss bankruptcy or wage earners plans at any time during our interviews. If these subjects are brought up, we suggest that they see an attorney. We have no advice to give them on those plans. Ours is a budgeting service, sir, not a means of disposing of the man's moral obligations, and financial.

Q. Then, if a person doesn't bring up the bankruptcy laws of the United States pertaining to wage earner plans, you don't bring it up to him?

A. No, sir.

Q. Then, if he doesn't bring up the subject or isn't aware of such plan, it is not called to his attention; is that right?

A. No, sir; when a client comes to us, or a person comes to us that is in debt, we assume that the reason he is coming to us is to pay his bills, not to cheat his creditors.

Q. Not to cheat his creditors. A person who comes to you then doesn't have a choice presented to him of the remedy of the wage earners plan in the United States District Court and your plan, does he?

A. I have already stated that we do not discuss wage earners plans or bankruptcy actions.

Q. You do advertise your services?

[fol. 31] A. That is right, sir.

Q. Then, you do advertise that the fidelity of your employees is insured by bonds?

A. Yes, sir.

Q. And you do advertise a schedule of payments.

Mr. Sanborn: Will you mark that, please, that page.

Q. Please look at the page of the "Personal Finance Law Quarterly Report," Volume XV, No. 3, Summer of 1961, page 88, column 1, at the reproduction of purported reproduction of an advertisement which begins "Bills Pressing" and after inspection, please state whether or not that is a reproduction of one of your advertisements.

A. That is a reproduction so far as I know. That is to say, with the exception of one or two words.

Q. Is the format—

A. (Interrupting) The format is the same, right.

Q. Are the contents the same? It is page 88, if you have lost it.

A. Yes, roughly. There may be some small changes. It is probably an ad that we have used at one time or another.

Q. The reason I am asking you to identify it is because I wish to offer it, so I don't want to go on probabilities or suggest that it is something that it isn't.

[fol. 32] A. Sir, our name is on it, so obviously we have used it. These people have taken it from somewhere. I don't know who they are.

Q. I am not trying to entrap you. I just wanted to find out whether or not you have read what I just placed before you.

A. Yes, sir, I have read it.

Q. Is there anything different in any words there from one of your advertisements?

A. No, it is an ad that we have used. It is not an ad that we continuously use. It is an ad that we have used.

Mr. Weigand: Has counsel offered this?

Mr. Sanborn: We thought we would have you inspect it first and then we would offer it.

Mr. Weigand: If you are only going to offer this "Bills Pressing"—

Mr. Sanborn: That is the idea.

Mr. Weigand: —just that deal, take it out of the ad—

Mr. Sanborn: I got that from the Law Library.

Mr. Weigand: I am not talking about that. The entire magazine has no relevancy to this.

Mr. Sanborn: That is true.

Mr. Weigand: If you want to cut this out and offer [fol. 33] this, we will not object to it. We don't think it is material to any issue now before the Court, but we will not object to the Court seeing it.

Mr. Sanborn: Thank you. We do so offer it.

The Court: Just that portion is your offer, is that right?

Mr. Sanborn: Yes, sir.

The Court: All right.

Mr. Weigand: We can cut it out, Judge.

Mr. Sanborn: I might tell you that that happens to

belong to the Law Library and I don't wish to deface that book.

Mr. Weigand: We can agree that the Court Reporter can copy that and then you can withdraw it.

The Court: He may.

Mr. Sanborn: I might tell the Court that anything else there can properly be placed in a brief with perfect decorum and submitted to Your Honor for your consideration in this case, in my judgment.

(Thereupon, the above ad referred to in Exhibit "G" is in words and figures as follows:

"Bills Pressing?

"If installment payments or past due bills are troubling [fol. 34] you, let us consolidate and arrange to pay all your bills, past due or not, with one low payment you can afford.

"If You Owe	As Low As
$1,000	$15 per week
$2,000	$25 per week
$3,000	$30 per week

"Open Nights by Appointment
"No Security—No Co-Signers
"Bonded for your protection
"Credit Advisors, 211 Brown Building
"Phone AM 5-0635

"Debt Worries ? ? ?
"Financial Management Service
"918 Central Bldg. HO 4-4261
"(Wichita Eagle-Beacon, June 4, 1961)")

By Mr. Sanborn:

Q. If a person after hearing of how your plan works is agreeable to signing up with you, you don't attempt to prevent him from seeing his attorney at all, do you?

A. Heavens, no.

Q. But you do attempt to show him the advantages of entering into the plan which your advertisement or your other reference has drawn him to see?

[fol. 35] A. We attempt to show him the advantage of getting out of debt and paying his bills in a regular and systematic fashion.

Q. By the use of your plan?

A. By the use of our services, right.

Mr. Sanborn: We have no more questions, but Mr. Henson has.

Cross examination.

By Mr. Henson:

Q. Mr. Skrupa, I have just two or three questions I would like to ask you on behalf of the Attorney General. When you stated on direct examination that you would be forced to discontinue business if the County Attorney, Mr. Sanborn, files a complaint against you, would you explain why you would be forced to discontinue business upon the mere filing of a complaint?

A. Well, sir, certainly I am not going to subject the people in my office to arrest or even harassment. I mean, I feel that we are operating a bona fide legal service here —not legal, I am sorry—a bona fide service here to help these people out, and if they are going to padlock the doors how can we stay in business? I don't know what they are going to do.

[fol. 36] The County Attorney told me he was going to shut us down. What does this mean? I don't know what he means, sir.

Q. Well, then it possibly could mean that if you were charged criminally and you were subsequently convicted and your conviction was upheld by the Courts of the State of Kansas as being accomplished under a lawful statute and you were forced to pay a fine and maybe suffer imprisonment, then you would suffer some irreparable damage.

A. Well, we certainly feel so. Besides, there is the fact of the reputation here.

Q. Now, have you been served with any summons or any accusation that you have violated this Senate Bill 366?

A. From who, sir?

Q. From any law enforcement officer of the State of Kansas.

A. From no law enforcement agency other than the conversation that I had with the County Attorney on the telephone.

Q. You have been served with no summons or accusation?

A. I have been served with no papers, no, sir.

Q. Have you been informed by the Attorney General, Mr. Ferguson, that he intends to prosecute you under Senate Bill 366?

A. No, sir, I haven't.

Q. Have you had any contact at all with Mr. Ferguson?

[fol. 37] A. Only through my attorneys, sir.

Mr. Henson: That is all, Your Honor.

COLLOQUY BETWEEN COURT AND COUNSEL

Mr. Bell: The defendants don't deny that they are going to enforce this law, do they?

Mr. Weigand: If it is not enjoined.

Mr. Henson: Your Honor, we don't feel this is the time to make legal obligations.

Mr. Bell: This is a matter of allegation in our petition and I will put on additional proof, if necessary.

Mr. Henson: We feel the mere statement by the County Attorney, that he intends to do his duty under the law, is not sufficient to show irreparable damage.

Mr. Bell: Well, I will go further than that:

Won't the Defendant County Attorney stipulate that he advised myself and Mr. McRae yesterday in the County Court House that he intended to enforce this law and that he would file an additional complaint every day as long as he continued to operate?

Mr. Henson: Perhaps I should amplify my statement. We don't consider that this shows irreparable damage sufficient to warrant the Federal Court interfering with the enforcement of a State Criminal Statute. State Courts [fol. 38] are available.

Mr. Bell: Is it not stipulated that the facts are there? What the result is is a matter for court determination.

Mr. Henson: We don't stipulate to that. We don't stipulate that you are showing irreparable damage.

Furthermore, we don't think the Attorney General could enforce this if he wanted to in the District Court.

Mr. Bell: In order to save time of the Court, let me inquire of counsel this: First of Mr. Sanborn, the defendant, will you not so stipulate that the facts as I have outlined with reference to what you intend to do in the enforcement of this Act is substantially correct, are substantially correct?

Mr. Sanborn: If you will permit me, I will just tell you my version of what happened, or the Court, and I can do it briefly.

When I talked with this gentleman on the phone, when he called me from Omaha, he inquired of me—

Mr. Bell: I am talking about yesterday.

Mr. Sanborn: I know, but he has been saying I said "I am going to close you down." What I told the man was [fol. 39] that this is the same as any other criminal statute of our State and would be treated the same as any other statute of our State, and he inquired whether we would just give token enforcement to it, and I advised him we would not just give token enforcement to it, that whatever sanctions were imposed would be the function of our courts and not of our office.

What Mr. Bell is referring to as of yesterday was a conversation between he and Mr. McRae and me, in which I stated to them that in the case of pollution cases the practice had been followed in the past of advising the person that a new complaint would have to be filed every day if they didn't desist from the continued course of conduct which violated the State law, and that I supposed we would have to use the same type of measures in this case if a person was arrested for an offense and then committed the same offense the next day, and I don't think any time a State statute is involved that you take a position without regard to what the other one-hundred-five county attorneys might be compelled to do and you work with the Attorney General in the matter, but as I conceive the statutory and constitu- [fol. 40] tional legal machinery in the State of Kansas, it is as the Assistant Attorney General has stated.

The Attorney General does not file actions except in certain specified classes of cases, unless he comes to the conclusion that the County Attorney isn't doing his job properly.

And it isn't any desire to evade what they say, but I don't think that we should be pinned down to one certain course of action prospectively when we have not yet been presented with the first case. That is my reason for kind of elaborating on what Don said. They are not misrepresenting anything about what I said to them, Your Honor. He pointed out that they couldn't file criminal complaints if —they would have to take steps—it won't come to that, anyway, but we were just discussing.

Mr. Bell: Moving from Mr. Sanborn to the Attorney General's office, is it not true that the Attorney General's office has stated that they will be obliged to take the position that this statute is constitutional and valid and that if advice is requested of them from the County Attorney's office, or anyone else, that they will have to take the position it should be enforced.

[fol. 41] Mr. Henson: The Attorney General's office by statute is counsel for State Departments and agencies of the State of Kansas.

If one of those departments or agencies is sued, we as their counsel would of course undertake to defend the legality of their actions. We think that is something different than being a defendant in a case such as we are in this action.

Mr. Bell: I am trying to shorten this hearing and you haven't answered my question.

I am asking you: Is it not true that the Attorney General's Office takes the position that this statute is constitutional and that it is valid and that if requested for an opinion from a County Attorney, or other officers of the County or State, that the Attorney General has stated he will take the position that it is constitutional and valid and that it should be enforced?

Mr. Henson: I can not state— Are you saying Mr. Ferguson has made this statement?

Mr. Bell: I am talking about the Attorney General's office. You are representing him.

Mr. Henson: I say the Attorney General takes no position on the constitutionality of a state statute until it is [fol. 42] brought in question in some manner. We represent the Legislature as legal counsel and if their acts are challenged as illegal, depending upon the judgment of the Attorney General at the time, he would probably defend, as counsel defend the legality of that action of the Legislature.

Mr. Weigand: May I inquire of counsel?

Mr. Henson: Yes, sir.

Mr. Weigand: If the Court should determine that the County Attorney because of his intended enforcement of the action should be stayed pending a hearing on the preliminary injunction before the three-judge court, as provided by statute, and the Attorney General of the State of Kansas is not enjoined, will he assure this Court that he will not take any action or his office will not take any action to enforce this statute against this man until it can be heard on its merits before the three-judge court?

Mr. Henson: I am not authorized to commit the Attorney General's Office to any future course of action. I can cite counsel's attention to the statutes which give the Attorney General no authority to institute criminal prosecu- [fol. 43] tions in the District Court except in certain specified types of statutes of which Senate Bill 366 is not one.

Have I answered your question?

Mr. Weigand: Well, you asked a question of the witness which so far as I could see was of no materiality. The only materiality would be that the Attorney General of the State of Kansas did not, unless restrained, intend to enforce this statute against them until after the Court could determine its constitutionality.

Mr. Henson: If I may explain my question, I assume that the gentleman during his direct examination was trying to show irreparable damage would be suffered by this plaintiff if the Attorney General were not enjoined.

Mr. Weigand: If the enforcement of the statute was not enjoined.

Mr. Henson: The burden of showing irreparable damage is on you. I merely want to point out that I do not believe

the Attorney General has indicated one way or another that he is going to enforce the statute.

Mr. Weigand: That would only be material if there was no threat to enforce it pending the hearing by the three-[fol. 44] judge court with respect to a determination of its constitutionality. It is only that interim period that is now before the Court.

Mr. Henson: I would think that it is up to the plaintiff to show that he will suffer irreparable damage if not temporarily enjoined.

Mr. Weigand: Well, Your Honor, there is no need to discuss the law now.

Mr. Henson: We don't believe that we have made any allegations or could make any allegations to enforce the statute.

Mr. Bell: Your Honor, I would like to ask the witness one more question.

Redirect examination.

By Mr. Bell:

Q. On cross-examination, Mr. Skrupa, Mr. Sanborn inquired of you about the matter of compromising debts, and I would like for you to explain whether or not you were talking about a compromise of a fixed payment or compromise in principal amount of debt.

A. We were talking only about compromising fixed payment. We don't make any attempt to compromise the total amount.

Mr. Bell: That is all.

[fol. 45] The Court: Any other questions?

Recross examination.

By Mr. Sanborn:

Q. Do you attempt to obtain extensions of time within which to pay the indebtedness?

A. Yes, sir, under some circumstances.

Q. When you have successfully effected such extension

of time, do you expect the creditor to honor the agreement that you have reached?

A. Yes.

Q. And do you attempt to make this effectuation in such a fashion that it will be binding upon the creditor to keep his word and if your client does his part of the agreement to perform the payments agreed upon, that the creditor will do his part?

A. Yes, we have to assume this.

Q. You attempt to make a meeting of the minds of the parties upon this matter?

A. Right.

Q. And you attempt to cause the creditor to recede from insisting upon his full right to payment as of a certain time and to consent to have a lesser periodic amount until the total amount is paid?

[fol. 46] A. Yes, until the total amount is paid, but we do not bargain on the total amount.

Q. You don't go into the question of whether the debt may be usurious or not, then?

A. No, sir. If a man comes to us and he says he owes Jones $500.00, we assume he owes Jones $500.00.

Q. What do you do with respect to the interest?

A. I don't follow you, sir.

Q. You get extensions of time. When you do that, what do you do with respect to the interest that accrues?

A. Well, it just accrues and we pay it. We assume that these people, if they have the right to charge interest, that they are charging a fair rate of interest.

Q. You don't undertake to see whether it is fair?

A. No, sir, we don't question their right. If a client of ours felt that he was getting cheated, again I repeat that we would advise him to see legal counsel about this matter.

Q. If what?

A. If a client of ours assumed or for some reason thought that he was being cheated by a creditor or charged too much interest, or anything like that, and told us about it, we would simply refer him to legal counsel, no specific legal counsel, just tell him to get one.

[fol. 47] Q. Do you ever decide after reviewing someone's

financial condition that you cannot do any good for them and tell them they better take bankruptcy?

A. No, sir, we don't tell them to take bankruptcy. We merely tell him that we cannot be of any help to him and that we would possibly get him into more trouble than he is already in.

Q. And do you tell him what he should do?

A. No, sir, we do not.

Q. You haven't referred any of them to anybody?

A. No, sir, we have never referred a single person to any attorney in this town or any other town.

Q. You, yourself, have not. You don't stay around the Wichita office, do you?

A. No, sir, but my people have those instructions.

Mr. Sanborn: That is all.

The Court: You may step down.

(Witness excused.)

The Court: Is there any other evidence on behalf of the plaintiff?

Mr. Bell: We have no further evidence, Your Honor.

The Court: Do the defendants have any evidence?

ARGUMENT ON APPLICATION FOR TEMPORARY RESTRAINING ORDER AND RULING THEREON

Mr. Sanborn: No, sir. Do you have a copy of the statute, Your Honor?

[fol. 48] The Court: I have the Act as it is set out in the Complaint.

Mr. Sanborn: Well, my disadvantage is that we have never seen a copy. We do have a copy of the Senate bill and Donald Bell gave me a photostatic or other mechanical reproduction of his copy of the Senate bill, and I am just going on the assumption that it was passed finally in the form in which they have it, but I have no knowledge that I could represent to this Court that that is the form in which it was passed.

Mr. Bell: All I can say, Mr. Sanborn, is that we have talked to the legislator who helped to push the bill through and he advises us that this is the form of the Act, that it

was not amended when it passed. That this is the Act that was signed by the Governor of the State of Kansas.

As experts in the law, we understand that the statute is to become effective either on June 30th or July 1st, as it is printed and typed in our Complaint.

The Court: Anything else?

Mr. Sanborn: All right.

The Court: Anything else, gentlemen?

[fol. 49] Mr. Weigand: Your Honor, there is a matter of the necessity for any order restraining the defendants to be conditioned upon posting of a bond to pay any damages that might result as a result of it.

I might say to Your Honor that—I don't know whether you want to go into the law with respect to it—but with respect to whether or not there is a substantial federal question, the virtually identical Pennsylvania statute, enacted in 1955, which instead of calling this "Business Debt Adjusting" called it "Budget Planning." If Your Honor will look at Section D of the Kansas Act, I will read from this decision to show you how identical the Pennsylvania statute was, and it was held to be unconstitutional and the deprivation of a person's property without due process of law. I think that is all that we need and that case has never been reversed.

Mr. Sanborn: We would like to know the citation, if we may, please.

Mr. Weigand: Commonwealth v. Stone, 155 Atlantic 2nd, 453, Supreme Court of Pennsylvania. This is the definition section of the Pennsylvania Act:

"Budget planning as used in this section means the making of a contract, express or implied, with a particular [fol. 50] debtor, whereby the debtor agrees to pay a certain amount of money periodically to the person engaged in the budget planning business, who shall for a consideration distribute the same among certain specified creditors in accordance with the plan agreed upon."

That is so similar as to be almost identical, if the Court please, and I think as to substance is sufficient without the additional. We have got a lengthy brief here but Your Honor is not now passing upon the question as to the

constitutionality of the Act, but whether or not there is a substantial question presented and whether, pending the hearing of that by a three-judge Federal Court they should be enjoined from restraining because of irreparable damage, and I think if Your Honor would fix a bond which would be conditioned, the restraining order to be conditioned that it wouldn't be effective until the bond was posted, that the statutes of the United States of America which provide for this action under these circumstances would be completely complied with.

The Court: What do you suggest as the amount of the [fol. 51] bond? I am talking to both sides.

Mr. Weigand: I don't know what their theory of damages could be to the State of Kansas for a period of—what will we have, three weeks or a month—perhaps a month's delay probably, Judge, before the matter of the application for an interlocutory injunction can be heard.

The Court: I assume that the case would be heard on its merits whenever the three-judge court is able to convene.

Mr. Weigand: Well, both ways is provided in the statute. The period of time and I imagine that the only basis of the damages that the State of Kansas could suffer would be the work of the attorneys in ridding themselves of the unlawful restraint.

If there are any other elements of damage, I don't know what they could possibly be.

Mr. Sanborn: If it please the Court, we certainly hope that no restraining order is issued; however, if it should be issued, the measure of damages would be the extent of the business unlawfully engaged in in violation of the law of the State of Kansas, which by the evidence of the plaintiff, I believe was—I don't recall—I think he said some [fol. 52] $500,000.00 per annum, and I believe he stated that his investment was $24,000.00, but the business, not the investments, is what would be the measure of damages.

We have three reasons why Your Honor should not issue a temporary restraining order. The first—we have three cases to cite. By the common law of the State of Kansas, the advice to clients—and we certainly urge they are clients which this man stated to Your Honor he was giving—was held in Depew v. Wichita Association of

Credit Men to be engaging in the practice of law. The citation in the Pacific Reporter of that case is 49 Pacific 2nd, 1041. Finding No. 6, which appears on page 1045, sets out—

The Court: Aren't you going to the merits of the case now?

Mr. Sanborn: I am trying to go only to one question, whether there is a substantial federal question, and I am trying to point out that because of the Depew case in Kansas and because of the fact that our courts without the aid of statute has already found that this is a practice of law, that you can not divest an interest unlawful, that has been declared to be unlawful, before you begin to [fol. 53] engage him. The Depew case was in—Claude Depew brought it on behalf of the Bar Association and that was decided October 5, 1935. Rehearing denied December 16, 1935. And the Supreme Court of the United States refused certiorari in that case, and my point is simply that for many, many years it has been the law that these practices were the unlawful practice of law and the fact that our Legislature should pass a statute declaring a criminal penalty for engaging in the unlawful practice of law is not something new and different and novel, but merely particularizes a certain phase of the business specifically found to be unlawful in 1935 and reviewed by our Supreme Court and not reviewed by the Supreme Court of the United States.

The Court: Let me see that Depew case.

Mr. Sanborn: Then this Home Budget Service v. Boston Bar Association, decided by the Supreme Court of Massachusetts January 7, 1957, argued November 5th, 1956, Home Budget Service, Incorporated, v. Boston Bar Association, an injunction was sought by the Home Budget Service. That is 139 Northeast 2nd, 387:

"Action by corporations and individual furnishing debt [fol. 54] pooling services against Bar Association for declaratory decree as to constitutionality of statute making it illegal for anyone but a member of the bar to furnish services in connection with debt pooling plans held the statute is not constitutional as an interference with purely

judicial function to determine who may practice law is valid enactment in aid of courts' powers to make determination, to make determination and that plaintiffs would be enjoined from rendering such services. A person coming into equity must have clean hands. A person asking a court of the United States not only to enjoin action by a state but to stay the hand of the legislature of a state passing a statute in aid of the common law of the state, as declared by its Supreme Court, that same person having previously been found by the District Court to have been engaged in unlawful practice, all without the aid of this statute, does not have, in our judgment, such clean hands as to call forth this summary and very powerful remedy."

[fol. 55] I would like to merely ask Your Honor to read from page 389, from which I took all the questions of my cross-examination of this gentleman, and find that he answered them in the same way that the Massachusetts court had considered to be this type of business in making their ruling.

Mr. Henson: If it please the Court, if it is proper at this time to do so, I would like to move that this action be dismissed as to William Ferguson, the Attorney General, on the grounds that the plaintiff's evidence has not shown, nor do the statutes of the State of Kansas give him any authority to enforce this criminal statute initially against these defendants. Therefore, we feel they have no cause of action against him as threatening to enforce the statute against them.

Should our motion to dismiss be overruled, we urge that the temporary restraining order not be granted.

We feel that the plaintiffs have not shown that they will suffer irreparable injury or harm if the status or if the matter is continued without such an injunction until the matter can be heard by the three-judge federal court. They [fol. 56] have not shown that any complaints are now pending or have been filed against them. They could not show that because the statute has not yet gone into effect. All they have shown are statements by the County Attorney that he will consider this as he considers every other criminal statute and proceed accordingly. And we feel that statements by a county attorney that he will enforce the

law do not in and of themselves demonstrate that the plaintiff is going to suffer irreparable injury if a temporary restraining order is not granted.

Mr. Weigand: If Your Honor please, the Massachusetts case that they are relying upon, while it appears to have a contrary result from the Pennsylvania case, it is again one of the things even if it was identical, but it isn't. In Massachusetts the statute took a different form. The Massachusetts statute, as I understand that case, merely defined certain acts as the practice of law. And the Supreme Court of Massachusetts merely held that the Legislature had a right to define certain acts as the practice of law.

Now, this statute doesn't say anything about the practice of law. It merely prohibits a man from agreeing [fol. 57] with another man to take a periodic payment and distribute it among his creditors for a fee.

The Supreme Court of Pennsylvania has held that to be a lawful business, and we have other decisions which on the hearing on the merits, I think we can convince any court that that is a lawful business and while it is subject to regulation, it is not subject to prohibition, and this statute prohibits rather than regulates. It doesn't say a man can do so and so under certain conditions. He couldn't say, or it doesn't say he can do so if he posts bond. It doesn t say he can do so if he posts a license. It says he cannot do it. And it is invalid, unconstitutional, deprivation of an ordinary business practice which is not the practice of law.

Now, in the Depew case, which they mentioned, that went to the Supreme Court on Claude's right as president or a member of the unauthorized Practice Committee to enjoin a person from practicing law. The result of that case, Your Honor, it came back after they held that he could practice law, and let me read to you the consent decree that was entered in that case and you can ascertain very readily [fol. 58] that it has no application to this statute or to this type of business at all.

"Whereupon, by consent and agreement of the parties it was by the Court considered, ordered, adjudged and decreed that the defendant, The Wichita Retail Credit As-

sociation, Incorporated, all of its officers, agents, servants and employees, and each and every one of them, be and are hereby restrained and inhibited and permanently enjoined from severally and jointly doing or performing any of the following acts:

"First, from preparing or filing in any district court in this State or before any justice of the peace of this State for and on behalf of another any pleading or other document, from appearing before or representing another in any manner in any action or proceeding in any district court in this State or in the court of any justices of the peace of this State.

"Second, from placing accounts for collections with attorneys at law, from using in its attempt to make collec- [fol. 59] tions any means other than the ordinary solicitation and dunning and from threatening legal action or threatening to place the account with an attorney at law and from threatening to enforce the payment of any claim or account by threatening legal action, provided, that if it appears to be the wish of the creditor the defendant may upon returning the account to the creditor suggest the name of an attorney at law or attorneys at law to handle the account or claim directly for the creditor; from receiving directly or indirectly any portion of any fee paid to or due to an attorney or for any legal services rendered in connection with the collection of a claim, account, demand or otherwise, from advertising or in any manner holding out that the defendants, or any of them, maintain a legal department for the use of others or that it in any manner maintains a law department for the practice of law by the hiring of attorneys to carry on the practice of law from employing directly or indirectly under any contract any attorney at law to file suits or accounts or other claims [fol. 60] of indebtedness for any claimant or creditor.

"Third, from preparing, furnishing or causing to be prepared and furnished in connection with the assignment, transfer or pledging of a debtor's business or property, or any part thereof, any agreement or assignment for the benefit of creditors or any trust, mortgage or any chattel

mortgage, deed or lease or other instrument of a similar nature or character in connection with such transaction whereby legal rights are effected or determined and from giving advice as to the legal rights under any such instrument or instruments from the assignment or transfer of property for the benefit of creditors by whatever means or instrument used by which legal rights are effected or determined and from giving legal advice thereon. This order is not to apply to use by the defendant in its business of blank notes, drafts and similar blanks ordinarily obtainable at a book store and the filling out of same where no legal skill or knowledge is required and where no advice as to legal rights in connection therewith is given and [fol. 61] no compensation or remuneration is received either directly or indirectly.

"Fourth, from using in connection with its collection department or collection agencies printed forms which simulate or are intended to simulate the process of courts and convey the impression that the defendant has the right to issue and serve court processes and bring suit, attachment, garnishment and other legal processes in court for the enforcement of the accounts and claims which it has for collection.

"It is further ordered that the cost of this action be taxed in the amount of twenty-one fifty be hereby assessed against the defendant."

And that was the final result of that, and if there is any similarity between the actions that the Bar Association agreed should be the subject matter of the decree and this action, Your Honor, I fail to recognize any semblance or similarity between them at all, and it not at all in point.

I think Your Honor has only one matter here before the Court today and that is to determine whether from [fol. 62] the evidence of this man's business and activities this statute would prohibit him from carrying them on until such time as the three-judge court can determine the constitutionality of it and setting a bond to pay them any damage which the restraining order wrongfully obtained would result to the State and County Attorney and the Attorney General of the State of Kansas.

Mr. Sanborn: Your Honor, I think counsel is going far beyond the opinion of the Supreme Court of the State of Kansas or the application of it. He cites some agreements between the Bar Association and this Association.

I invite Your Honor's attention to the fact that there were two cases involved in that opinion and it is both Depew v. Wichita Association of Creditmen and Beck, Attorney General, or State of Kansas ex rel. Beck, Attorney General, and I would like to invite Your Honor's attention to the fact that what the Supreme Court expressly found to be unlawful, one portion of it was Mr. Garrison, the manager's counseling people that his plan was a good plan and they ought to accept his plan and refraining from advising them as he was in no position to do, but, never-
[fol. 63] theless, was undertaking to practice law, that they had other judicial remedies under the laws of the United States and this—we start out with a presumption that the Act is constitutional. We have it buttressed by the findings of our court, both then and now. We have this man in February having a finding adverse to the lawfulness which he has been perfectly at liberty to test out if he did not agree with the findings of our court. Here it is the end of June. This was in February. Now he asks you to—it isn't just like a controversy among people. It is a question of whether the sovereignty of our State shall be interfered with. And I know that it won't be interfered with lightly because I know we have a duality of sovereignties and the very fact that the United States would not interfere doesn't imply any weakness on behalf of the United States. It merely would be an application of the rule that if it is a proper exercise of power, it is entitled to the assistance of courts because courts alone determine what is lawful and unlawful practice of law in their state.

The Court: I am not going to determine nor will the three-judge court determine whether or not this is the un-
[fol. 64] lawful practice of law.

All we will determine is the constitutionality of the statute that we have before us. That is a new question. That question is not before the State District Court. It was not decided in the State District Court. The statute didn't even exist at that time.

Mr. Sanborn: Right.

The Court: This is an entirely different question.

Mr. Sanborn: Your Honor, counsel, the reason I addressed my remarks to that, counsel tells you that it is an absolute prohibition. It isn't.

If you will see the statute alleged, it says:

"The provisions of this Act shall not apply to those situations involving debt adjusting as herein defined and incurred incidentally in the lawful practice of law in this State."

It doesn't prohibit a certain business. It prohibits making a business out of the practice of law which is a profession.

The Court: Anything else, gentlemen?

Mr. Sanborn: No, sir.

The Court: The temporary order will issue and I will [fol. 65] fix the bond at $2500.00.

Mr. Weigand, I suggest that you submit to me appropriate findings of fact in connection with the order.

Mr. Weigand: We have prepared an order, Your Honor, which, if I might show it to counsel to see if they have any objection.

The Court: If it is all right, you just leave it. I think we will adjourn court. In any event, you prepare and submit to me an order and, if it meets with my approval, I will sign it.

Mr. Weigand: Thank you, Judge.

Mr. Henson: Your Honor, do I understand that the Attorney General is maintained a party defendant?

The Court: I am going to keep his feet in the fire.

Mr. Sanborn: Your Honor, I am not trying to be technical, but the Governor hasn't been notified of this and he has to be notified too.

The Court: This is only a hearing on the temporary order, Mr. Sanborn. That five-day notice will be given in the time provided for by law.

Court will be adjourned subject to call.

[fol. 66] Reporter's certificate (omitted in printing).

[fol. 67] Clerk's certificate (omitted in printing).

[fol. 68] [File endorsement omitted]

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF KANSAS
Civil Action No. W-2434

FRANK C. SKRUPA, d/b/a Credit Advisors, Plaintiff,

vs.

KEITH SANBORN, County Attorney for the County of Sedgwick, State of Kansas, and WILLIAM M. FERGUSON, Attorney General for the State of Kansas, Defendants.

TEMPORARY RESTRAINING ORDER—June 28, 1961

This cause comes on to be heard on the application of the plaintiff in the above entitled cause for a restraining order and for an interlocutory injunction against the defendants, Keith Sanborn, County Attorney for the County of Sedgwick, State of Kansas, and William M. Ferguson, Attorney General for the State of Kansas, in the above cause on the verified complaint of plaintiff; it appearing to this Court that said complaint herein seeks an interlocutory judgment restraining the enforcement of Senate Bill 366, 1961 Kansas Session Laws, a statute of the State of Kansas, by restraining the acts of the County Attorney of Sedgwick County, Kansas, and the Attorney General of the State of Kansas, in the enforcement of such statute against this plaintiff upon the ground of the unconstitutionality of the said statute as provided in Sections 2281 and 2284 of Title 28 of the United States Code.

Whereupon, the Court after notice to the said defendants, who appeared at this hearing at 3:00 o'clock p.m. on the 28th day of June, 1961, by Keith Sanborn pro se and Chas. Henson for the Attorney General, and the Court having [fol. 69] heard evidence finds and concludes that immediate and irreparable damage will be caused to plaintiff by reason of the enforcement of said statute, in that evidence pro-

duced by the plaintiff shows that the enforcement of the statute would require the complete cessation of the plaintiff's business involving the plaintiff in breach of contracts partially performed, loss of customers and business, as well as good will and reputation, unless a temporary restraining order is issued against said defendants pending the hearing of said application for an interlocutory injunction, or until the further order of this Court.

It is ordered that upon the filing with the Clerk of this Court a bond giving security by the plaintiff in the sum of 2500.00 Dollars conditioned upon the payment of such costs and damages as may be incurred or suffered by any defendant who is found to have been wrongfully restrained, Keith Sanborn, County Attorney of Sedgwick County, Kansas, and William M. Ferguson, Attorney General of the State of Kansas, and their agents, associates, assistants and all persons acting in their behalf be and are hereby enjoined from filing any complaint against the plaintiff, his agents, servants or employees, for alleged violation of said Senate Bill 366, 1961 Kansas Session Laws, or prosecuting any acts for violation of same by said plaintiff or in any way attempting to enforce any of the provisions of said Senate Bill against said plaintiff until said hearing for said application for an interlocutory injunction or until further order of this Court.

Dated at Wichita, Kansas, this 28th day of June, 1961.

Delmas C. Hill, United States District Judge.

[fol. 70] Approved:

Weigand Curfman Brainerd Harris & Kaufman, By Laurence Weigand, Attorneys for Plaintiff.

Keith Sanborn, County Attorney, Sedgwick County, Kansas.

Charles N. Henson, Jr., Ass't Attorney General, for the Attorney General,

Defendants.

[fol. 71] [File endorsement omitted]

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF KANSAS

[Title omitted]

ORDER FOR A THREE JUDGE COURT—July 10, 1961

Honorable Delmas C. Hill, United States District Judge for the District of Kansas, having notified me that an application for injunction has been filed in the above matter, and that it is an action required by Act of Congress to be heard and determined by a District Court of three judges:

Now Therefore, It Is Ordered that said Court shall be constituted as follows: Honorable Walter A. Huxman, United States Circuit Judge; Honorable Delmas C. Hill, United States District Judge; and Honorable Arthur J. Stanley, Jr., United States District Judge.

Dated on July 10, 1961.

Alfred P. Murrah, Chief Judge, United States Court of Appeals, Tenth Circuit.

[fol. 72] [File endorsement omitted]

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF KANSAS

[Title omitted]

MOTION OF DEFENDANT WILLIAM M. FERGUSON, ATTORNEY GENERAL FOR THE STATE OF KANSAS, TO DISMISS—Filed July 14, 1961

Defendant William M. Ferguson, Attorney General for the State of Kansas, moves the Court to dismiss the action

because the complaint does not state a claim against defendant upon which relief can be granted.

Charles N. Henson, Jr., Assistant Attorney General.
Topeka, Kansas, Attorney for Defendant.

Certificate of Service (omitted in printing).

[fol. 73] [File endorsement omitted]

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF KANSAS

[Title omitted]

APPLICATION OF WILBUR D. GEEDING, ET AL. COMPRISING UNAUTHORIZED PRACTICE OF LAW COMMITTEE OF WICHITA BAR ASSOCIATION TO INTERVENE—Filed August 8, 1961

Come now Wilbur D. Geeding, Robert A. Coldsnow, Ralph Foster, Guy L. Goodwin, Donald B. Clark, William Porter, Julian E. Ralston, Cliff W. Ratner, Robert J. Roth, Robert M. Siefkin and J. Edward Taylor, Jr. and respectfully move the Court for permission to intervene and to file the answer and counterclaim hereto attached as Exhibit "A".

1. Applicants are licensed attorneys at law, residents of the City of Wichita and citizens of the State of Kansas. Applicants comprise the Unauthorized Practice of Law Committee of the Wichita Bar Association. The Wichita Bar Association is a voluntary association of attorneys at law resident in Wichita and citizens of the State of Kansas. Such association has more than 400 members, and it is impracticable to bring them all before the Court. The members of such association have a common interest in [fol. 74] preventing the unauthorized practice of law. Pursuant to resolution of the Board of Governors of the Wichita Bar Association applicants appear as representatives of the members of the Wichita Bar Association.

2. As stated more fully in the answer and counterclaim hereto attached the members of the Wichita Bar Association claim that the activities of the plaintiff as alleged in the complaint constitute the unauthorized practice of law and that the statute attacked in the complaint is simply declaratory of the existing common law of Kansas that such activities are illegal.

3. The courts of the United States are the final arbiters of whether or not state legislation violates the Constitution of the United States. If not permitted to intervene, a decision in favor of plaintiff in this action would or might preclude the claim of the Wichita Bar Association that plaintiff is engaged in the unauthorized practice of law, without its having an opportunity to be heard.

Wherefore, applicants pray that they be permitted to intervene herein and that the attached answer and counterclaim be permitted to be filed.

Wayne Coulson, 901 First National Bank Building, Wichita 2, Kansas, Attorney for Applicants.

Certificate of Service (omitted in printing).

[fol. 76]

EXHIBIT "A" TO MOTION

IN THE UNITED STATES DISTRICT COURT

FOR THE DISTRICT OF KANSAS

[Title omitted]

ANSWER AND COUNTERCLAIM OF WILBUR D. GEEDING, ET AL., INTERVENING DEFENDANTS

Come now Wilbur D. Geeding, Robert A. Coldsnow, Ralph Roster, Guy L. Goodwin, Donald B. Clark, William Porter, Julian E. Ralston, Cliff W. Ratner, Robert J. Roth, Robert M. Siefkin and J. Edward Taylor, Jr. and for their answer and counterclaim, allege:

Answer

1. These defendants are licensed attorneys at law, residents of the City of Wichita and citizens of the State of Kansas. These defendants comprise the Unauthorized Practice of Law Committee of the Wichita Bar Association. The Wichita Bar Association is a voluntary association of attorneys at law resident in Wichita and citizens of the [fol. 77] State of Kansas. Such association has more than 400 members, and it is impracticable to bring them all before the Court. The members of such association have a common interest in preventing the unauthorized practice of law. Pursuant to resolution of the Board of Governors of the Wichita Bar Association these defendants appear as representatives of the members of the Wichita Bar Association.

2. These intervening defendants are officers of the courts of the State of Kansas and as such are authorized and required to call to the attention of the courts all instances of the illegal practice of law within their knowledge.

3. These intervening defendants admit the allegations of paragraphs 1, 2, 4, except the last clause thereof, 5, 7, and 8 of the complaint.

4. These intervening defendants deny the allegations of paragraph 3, the last clause of paragraph 4, paragraphs 10, 11 and 12 of the complaint.

5. These intervening defendants have insufficient information to form a belief as to the truth of the averments of the first two sentences of paragraph 6 of the complaint. These defendants deny the remainder of paragraph 6 of the complaint.

6. These defendants have insufficient information to form a belief as to the truth of the averments of paragraphs 8 and 9 of the complaint.

7. These defendants allege that the public interest and the protection of the public demand that legal advice and services be rendered to the public by qualified persons, schooled and educated in the law and who are duly admitted

to practice as attorneys and counsellors at law under the laws of the State of Kansas.

[fol. 78] 8. That the public interest requires and demands that any person receiving legal advice and services will receive the same directly from a duly qualified attorney and counsellor at law, who shall directly represent such person and who is at all times subject to the discipline and control of the courts of this state.

9. That one of the chief functions of the Wichita Bar Association is to aid in maintaining for the benefit of the public high standards of professional services and conduct and to that end it has organized and maintained certain committees such as the Committee on Unlawful Practice of the Law to protect the public against unqualified and unlicensed persons and corporations who may engage improperly and illegally in the practice of law and hold themselves out as authorized to practice law.

10. Plaintiff, in connection with the services rendered and offered to be rendered to his clients, has for more than the one year last past, rendered legal service and given legal advice to his clients as will be hereinafter more particularly described, all of which acts may be performed only by a person duly permitted to practice as an attorney and counsellor under the laws of the State of Kansas; that the plaintiff is and has been engaged in rendering services as follows:

a. Plaintiff has held himself out as being in a position to represent a debtor by adjusting, compromising, settling, paying-off or otherwise discharging the debtor's obligations out of funds deposited with the plaintiff by the debtor for distribution to the debtor's creditors on the basis of terms worked out by the plaintiff with the creditors.

[fol. 79] b. Plaintiff has at various times in the past, advertised that the plaintiff was in a position to represent debtors in the handling and adjustment of their financial affairs.

c. That in various other forms and through other means, including solicitation in person and by mail, plaintiff has appealed for clientele by representing that he will handle the financial affairs of persons troubled by debt and will "get them out of debt" and will "protect their credit rating".

d. When a debtor-applicant contacts the plaintiff, he is invited to fill out an "Agreement" in which he is to list each and all of his obligations, including date incurred and present balance. The debtor is interviewed by the plaintiff as to his ability to pay a stipulated amount in regular installments to the plaintiff for distribution to his creditors. The debtor is advised as to the amount of such installment deposits that he should make in view of his earnings and circumstances. The amount agreed upon is then inserted in the "Agreement".

e. If a satisfactory understanding is reached with the debtor as to the amount and times of the deposits, the debtor is called upon to sign a contract with the plaintiff providing for a fee to plaintiff, which is usually 25 to 30 per cent of the amount of the indebtedness.

f. Upon execution of the contract and with the payment of the first deposit, it is the practice of the plaintiff to then proceed to contact the creditors of the debtor-client, in such order or priority as to the [fol. 80] plaintiff may seem wise or expedient. When contacted a creditor is advised as to the total amount of the client's indebtedness and the amount and frequency of the deposits which are to be made by the client and the amount and the times of the installments which the plaintiff proposed to distribute to the creditor in payment in full or compromise. In the event a creditor is dissatisfied with the proposed arrangement, the plaintiff negotiates with the creditor in an effort to persuade the creditor to accept the plan or agree upon some variation thereof mutually agreeable to the creditor and plaintiff.

g. In dealing with an unsecured creditor to whom the debtor is obligated on an open account, such as doctors, dentists, department stores, local merchants, etc., the plaintiff may and often does endeavor to compromise the indebtedness and persuade the creditor to agree to settle for less than the amount of the account, even though the amount agreed upon is to be paid on a deferred basis. In concluding compromise agreements, stipulations of settlement, releases or statements of satisfaction on behalf of debtors, preparatory to execution the plaintiff fills in blank spaces on forms of such instruments prepared by plaintiff's attorney-at-law, who represents plaintiff regularly on a retainer basis.

h. In dealing with a creditor who is unwilling to extend the time of payments or enter into an agreement for the liquidation of the obligation in the future, the plaintiff has on several occasions advised the debtor to file a voluntary petition in bankruptcy under the [fol. 81] Bankruptcy Act.

i. In dealing with a secured creditor, the plaintiff may and often does agree to make full contract payments to the creditor on behalf of the debtor-client, where the creditor is not willing to extend the time of payments or otherwise vary the terms of the contractual arrangement. Where the security instrument has not been filed or recorded, the plaintiff negotiates with the creditor taking into consideration the rights and interests of the particular creditor, general creditors and the debtor.

j. The plaintiff indicates and represents to the debtor that he will work out a workable plan for the liquidation of the debtor's obligations; the debtor is led to rely upon the advice and guidance of the plaintiff.

11. The services so rendered by the plaintiff involve the application of legal knowledge and skill and the consequent rendering of legal advice and services in doing

and performing the acts heretofore set forth and described; these defendants therefore allege that the plaintiff has engaged in the unlawful practice of the law and that all such acts engaged in by the plaintiff are in violation of the laws of the State of Kansas in such cases made and provided.

12. By virtue of the facts heretofore alleged plaintiff does not come into court with clean hands, is not entitled to litigate the alleged invalidity of the statute and is not entitled to equitable relief.

Wherefore, these intervening defendants pray that the action be dismissed for want of equity and, in the alternative, for a determination that the statute is valid; for an [fol. 82] injunction against plaintiff's unlawful practice of law by engaging in the "debt adjusting" business.

/s/ Wayne Coulson
901 First National Bank Building
Wichita 2, Kansas
Attorney for Intervening Defendants

[fol. 83] [File endorsement omitted]

In the United States District Court
For the District of Kansas

[Title omitted]

Answer of Defendant William M. Ferguson, Attorney General of Kansas—Filed August 16, 1961

Count I

First Defense

The complaint fails to state a claim against defendant upon which relief can be granted.

Second Defense

1. The allegations of paragraph 1 are admitted.

2. The allegations of paragraph 2 are admitted.

3. The allegations of paragraph 3 are denied.

4. The allegations of paragraph 4 are admitted, except that defendant denies that plaintiff will be irreparably injured unless defendant is enjoined from enforcing Senate Bill 366.

5. The allegations of paragraph 5 are admitted.

6. Defendant is without knowledge or information sufficient to form a belief as to the truth of the first two sentences of paragraph 6; the allegations of the third sentence are denied; defendant is without knowledge or information sufficient to form a belief as to the truth of the allegations of the fourth sentence regarding bonding of [fol. 84] employees; the allegations of the remainder of the fourth sentence are denied.

7. Defendant is without knowledge or information sufficient to form a belief as to the truth of the first clause of paragraph 7; defendant denies the second clause of paragraph 7.

8. Defendant is without knowledge or information sufficient to form a belief as to the truth of the allegations of paragraph 8, except that defendant admits that plaintiff's business is prohibited by Senate Bill 366, and denies the allegations of the last sentence of paragraph 8.

9. Defendant is without knowledge or information sufficient to form a belief as to the truth of the allegation concerning the extent of plaintiff's contracts; defendant denies that Senate Bill 366 impairs the obligations of these contracts.

10. Defendant denies the allegations of paragraph 10.

11. Defendant admits the title to Senate Bill 366 is as alleged by plaintiff, but denies that the title violates Article 2, Section 16 of the Kansas Constitution.

12. Defendant denies the allegations of paragraph 12.

Count II

First Defense

The complaint fails to state a claim against defendant upon which relief can be granted.

Second Defense

1 through 10. Defendant incorporates herein paragraphs 1, 2, 4, 5, 6, 7, 8, 9, 10 and 11 of the Answer to Count I as [fol. 85] paragraphs 1 through 10 of this Answer to Count II.

11. Defendant denies that there is an actual controversy between the parties in respect to which plaintiff needs a declaration by the Court as to the rights of the parties and the validity of a certain statute of the State of Kansas.

12. Defendant contends that Senate Bill 366 is a valid enactment of the Kansas legislature, but denies that he has authority to enforce its provisions against the plaintiff or threatens to do so.

Charles N. Henson, Jr., Assistant Attorney General,
Topeka, Kansas, Attorney for Defendant.

Certificate of Service (omitted in printing).

[fol. 86] [File endorsement omitted]

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF KANSAS

[Title omitted]

ANSWER OF KEITH SANBORN, COUNTY ATTORNEY OF SEDGWICK COUNTY, KANSAS—Filed August 17, 1961

Keith Sanborn, County Attorney of Sedgwick County, State of Kansas, for his Answer to plaintiff's Complaint, states:

1. He denies every allegation of plaintiff's Complaint not expressly hereinafter admitted.

2. He admits plaintiff is an individual citizen and resident of Nebraska, and makes no contention regarding plaintiff's address. Admits plaintiff's operation under the name of Credit Advisors. Admits his residence and qualification as County Attorney and those qualifications of Attorney General, William M. Ferguson.

He denies this action arises under the Constitution of the United States, Article I, Section X, and Amendment Fourteen, Section I, or either of them. Diversity of citizenship is admitted. The jurisdictional sum of $10,000.00 being in controversy is not admitted.

[fol. 87] He admits this action is brought under Title 28, United States Code, and that the relief sought is an injunction. He denies the Senate Bill 366 is in conflict with the Fourteenth Amendment to the Constitution of the United States, Section I, and Article I, Section X of the Constitution, or either of them. He denies that any property interest of the plaintiff is unlawfully interfered with; that the statute is in conflict with the Constitution of the State of Kansas, Article II, Section 16, and further denies the jurisdiction of this Court to decide the Kansas Constitutional question.

The passage of the act, Senate Bill 366, as alleged in paragraph four, is admitted. Defendant denies that any legally protectable irreparable injury will occur to plain-

tiff. Defendant admits plaintiff's ownership of the business and denies that the acts are prohibited by the statute. Defendant makes no contention regarding the time plaintiff has been in business, but admits plaintiff has been doing business in Wichita, Kansas. Defendant admits plaintiff has invested money in the business in Wichita, but has no evidence sufficient to form a belief regarding the extent thereof.

Defendant denies future prosperity of Wichita and Sedgwick County will be adversely affected by the elimination of plaintiff's business. Defendant expressly denies the usefulness and desirability of the conduct of business of plaintiff when in truth and in fact said business amounts to the unauthorized practice of the learned profession of the law. Defendant denies that debtors are protected by the operation of plaintiff's business and denies that plaintiff nor his employees engage in a practice contrary to the public welfare and denies that the method of doing business [fol. 88] of plaintiff does not adversely affect the public welfare.

Defendant admits that he will and intends to enforce the criminal statutes of the State of Kansas of which Senate Bill 366 is one and that he has so advised plaintiff. Defendant denies that the existence of this Act deprives plaintiff of any legally protectable interest and further that equal protection of the laws is not involved.

Defendant makes no contention regarding the effect of the public policy of the State of Kansas on plaintiff's business. Defendant has no knowledge of which to base a belief concerning paragraph nine, but does deny that the existence of the Act impairs the obligation of contract, it being merely declaratory of the common law of the State of Kansas existing before the contracts were in effect.

Paragraph ten defendant denies. Paragraph eleven defendant denies. Paragraph twelve defendant denies. As to Count Two of plaintiff's Petition, defendant denies all allegations realleged and incorporated previously denied by the foregoing portion of this Answer. As to paragraph eleven defendant admits plaintiff deems himself aggrieved by the Law of Kansas, but denies any rights of plaintiff

are being infringed. Defendant admits paragraph twelve of Count Two.

For further Answer, defendant as County Attorney for Sedgwick County and the State of Kansas, alleges the practice of law is a learned profession licensed by the State of Kansas and supervised by the Supreme Court of the State of Kansas.

3. The court has adopted standards of knowledge, ability and character for its practitioners.

4. The court has inherent authority to and has fined matters comprising the practice of law.

5. Prior to plaintiff's setting up operations in the State [fol. 89] of Kansas and in Wichita, Kansas, particularly the practices in which plaintiff engages are and have been declared to be the practice of law. The statute of which plaintiff complains declares the public policy of the State of Kansas is not a new departure and merely provides sanctions for the unauthorized practice of law in addition to those already in existence.

6. Plaintiff is not a member of the bar of the State of Kansas and thus has not shown himself entitled to engage in the practice of law.

7. It is the duty of this court to support and protect the courts of the State of Kansas in limiting the practice of law to those duly entitled, qualified and authorized officers of the court.

8. The police power of the State is paramount under the Constitution of the United States and is entitled to protection of this court.

9. The public policy of the State of Kansas as expressed in the statute being attacked, the decisions of the Supreme Court of the State of Kansas and the customs and practices of the bar are entitled to the support of this court.

10. Said statute is an exercise of the police power of the State and is a power not delegated to the United States by the Constitution nor prohibited by it to the States and is reserved to the States respectively and to the people thereof

as provided in Amendment X to the Constitution of the United States.

11. For further Answer this defendant alleges that the suit itself is an attempt to violate the Eleventh Amendment to the Constitution of the United States by seeking to cause the judicial power of the United States to extend to a suit against one of the United States, the State of Kansas, by [fol. 90] plaintiff, a citizen of the State of Nebraska and the nominal defendants, Keith Sanborn, County Attorney and William M. Ferguson, Attorney General, are merely officers and agents of the State through which it exercises its reserve police power and the State is the real party in interest.

Wherefore, defendant, Keith Sanborn, prays this court to enter its judgment finding that the plaintiff has no legally protectable interest; that the acts of plaintiff constitute the unauthorized practice of law; that the statute declares the common law of the State of Kansas and declares the public policy of the State of Kansas does not contravene the Constitution of the State of Kansas or the United States and that it is valid in all respects. Defendant further prays that he have and recover his costs herein and such other and further relief that the Court deems just and equitable, and further that this action brought by plaintiff has caused expense to the State of Kansas and to Sedgwick County in particular for the preparation of the defense herein and for travel to the Court in Topeka, and that the bond posted by plaintiff herein was for the purpose of securing to the State of Kansas the expense and damage of the extraordinary exercise of authority in restraining the enforcement of the criminal law of the State and plaintiff should be required to pay a reasonable sum to indemnify the State of Kansas for the expenses of this proceedings, and for such other relief as may be deemed just and equitable.

Keith Sanborn, County Attorney.

[fol. 91] *Duly sworn to by Keith Sanborn, jurat omitted in printing.*

[fol. 105]

IN THE UNITED STATES DISTRICT COURT

FOR THE DISTRICT OF KANSAS

Civil Action No. W-2434

FRANK C. SKRUPA, d/b/a Credit Advisors, Plaintiff,

vs.

KEITH SANBORN, County Attorney for the County of Sedgwick, State of Kansas, and WILLIAM M. FERGUSON, Attorney General for the State of Kansas, Defendants.

Transcript of Hearing on August 17, 1961

APPEARANCES:

Hon. Walter A. Huxman, Judge, United States Court of Appeals for the Tenth Circuit (Ret.),

Hon. Delmas C. Hill, Chief Judge, United States District Court for the District of Kansas,

Hon. Arthur J. Stanley, Jr., Judge, United States District Court for the District of Kansas, Presiding.

Lawrence Weigand and Donald A. Bell, of the firm of Weigand, Curfman, Brainerd, Harris & Kaufman, Wichita, Kansas, and Ernest McRae, Wichita, Kansas, Appeared for Plaintiff.

Keith Sanborn, County Attorney, Sedgwick County, Kansas, Wichita, Kansas, appeared in person and by William Tomlinson, Deputy County Attorney, Sedgwick County, Kansas, Wichita, Kansas, and Artie Vaughn, Deputy County Attorney, Sedgwick County, Kansas, Wichita, Kansas.

[fol. 106] Charles N. Henson, Deputy Attorney General, Topeka, Kansas, Appeared for Defendant

William M. Ferguson, Attorney General for the State of Kansas.

Wayne Coulson, Wichita, Kansas, Appeared for Intervenors.

Harold Pittell, Official Reporter.

Be It Remembered, on this 17th day of August, A.D., 1961, the above matter coming on for hearing before the Honorable Walter A. Huxman, Judge, United States Court of Appeals for the Tenth Circuit (Ret.), Hon. Delmas C. Hill, Chief Judge, United States District Court for the District of Kansas, and Hon. Arthur J. Stanley, Jr., Judge, United States District Court, and the parties appearing in person and/or by counsel as hereinabove set forth, the folowing proceedings were had:

Mr. Weigand: Plaintiff is ready, if the Court please.

Mr. Sanborn: Defendant Keith Sanborn is ready, Your Honor.

Mr. Benson: Your Honor, the attorney general is present.

COLLOQUY BETWEEN COURT AND COUNSEL

Mr. Coulson: I have an application on file for permis-
[fol. 107] sion to intervene on behalf of the members of the Unauthorized Practice of Law Committee of the Wichita Bar Association.

Judge Huxman: Any objections?

Mr. Weigand: Your Honor, we would state in the record that, while we think it probably would be proper, if the Court deems it advisable to consider the appearance amicus curiae of the bar association, I don't believe the bar association or any member of the bar has any right to intervene in a three-Judge Federal court case which involves the constitutionality of the statute and which seeks enjoinment—enforcement of the statute by the law enforcement agencies, which is the county attorney and the attorney general of the state.

Judge Huxman: Do you grant their right to appear as amicus curiae?

Mr. Weigand: Yes, I think Your Honors could admit that, if you so desire.

Mr. Coulson: I will be glad to be heard on the motion to intervene, Your Honor. I think, in fact, I think we are entitled to intervene as a matter of right, and, if I am [fol. 108] mistaken in that view, I lean more strongly to the view that intervention is permissive as a party, not simply as amicus curiae.

Judge Huxman: Does it make any difference whether you intervene as a matter of right or amicus curiae?

Mr. Coulson: I can't see that it does, in any practical way.

Judge Huxman: The effect will be the same. You are in for whatever you have to submit on behalf of one of the sides of this issue.

Mr. Coulson: I believe that is true.

Judge Huxman: You may file your petition of intervention. The Court will treat it in the nature of an amicus curiae appearance, whatever the nature, it makes no difference in the ultimate result.

Let's have all the appearances, so the reporter gets them.

Mr. Henson: Charles Henson, assistant attorney general, appearing on behalf of William Ferguson, the attorney general.

Mr. Sanborn: Keith Sanborn, County Attorney of Sedg- [fol. 109] wick County, on behalf of the State of Kansas.

Mr. Tomlinson: William Tomlinson, Deputy County Attorney for the County of Sedgwick, Kansas, on behalf of the State of Kansas.

Mr. Vaughn: Artie Vaughn, Deputy County Attorney, State of Kansas, on behalf of the defendant.

Mr. Coulson: Wayne Coulson, Wichita, on behalf of Wilbur D. Geeding, Robert A. Coldsnow, Ralph Foster, Guy L. Goodwin, Donald B. Clark, William Porter, Julian H. Ralston, Cliff W. Ratner, Robert J. Roth, Robert M. Siefkin and J. Edward Taylor, Jr., as members of the Unauthorized Practice of Law Committee of the Wichita Bar Association.

Mr. Weigand: Lawrence Weigand and Donald Bell, and Mr. McRae, of Wichita, for the plaintiff.

If the Court please, with respect to the character of the appearance of the Sedgwick County lawyers' committee, they have filed what they denominated a counter claim in this action. It is the position of the plaintiff that there is no basis for a counter claim by amicus curiae, or for an [fol. 110] intervenor to counter claim, in an action such as this, where the sole issue is the constitutionality of a state statute.

Judge Huxman: What do they seek by virtue of their counter claim?

Mr. Weigand: They seek to make allegations respecting various practices which they say are the unauthorized practice of law, most of which are not encompassed or in any way relevant to the particular wording and scope of the statute in question, and it broadens the matter into what might be termed a state court proceeding for the unauthorized practice of law and has no relevancy to the scope of the statute which we are questioning here.

Judge Huxman: They seek no affirmative relief in any way, do they, Mr. Weigand?

Mr. Weigand: I think they seek an injunction, if the Court please. The prayer in this petition is as follows: "Wherefore, these intervening defendants pray that the action be dismissed for want of equity and, in the alternative, for a determination that the statute is valid; [fol. 111] for an injunction against plaintiff's unlawful practice of law by engaging in the 'debt adjusting' business".

Judge Huxman: With the exception of the last, the rest is the same relief sought by the defendant, isn't it, the dismissing of the complaint?

Mr. Weigand: Yes—

Judge Huxman: So the only—they ask for an injunction, that is the only affirmative relief that isn't sought by the defendants.

Mr. Weigand: What I wish to call Your Honors' attention to is the allegations of the complaint which go beyond the scope of the inquiry of this court in this matter, which

pertains solely whether or not the statute, as passed by the legislature, is valid and constitutional.

Mr. Coulson: The relief prayed for by the intervenors is, first, that the action be dismissed for want of equity. Only in the alternative—

Judge Huxman: Does the defendant also ask for that relief?

Mr. Coulson: I am not able to answer that. I think he asks for a determination that the statute is valid. We ask [fol. 112] for a determination if the statute is valid only in the alternative. We contend that the action should be dismissed for want of equity without ever reaching the validity of the statute, and, in the alternative, we ask that the statute be held valid and for an injunction against the practice of law.

Judge Huxman: Here is the way the Court feels about this, gentlemen: The only thing we are concerned with is whether this statute violates any provision of the Federal Constitution, whether it is invalid under the provisions of the Federal Constitution; whether it is equitable or inequitable, that might be a matter for the state court. But it isn't before this court. You can present anything you want to, but we are going to determine whether the inhibition of this statute violates the plaintiff's right under the Fourteenth Amendment to the Constitution. That is the only thing we are interested in.

Mr. Coulson: I have just checked the answer of the defendant Sanborn, who makes the same—asks for the [fol. 113] same relief; the basis for it is that the plaintiff is not entitled to be heard on whether or not the statute is constitutional or not.

Judge Huxman: Well, that might be a question, whether the plaintiff has a right to maintain this action. I suppose that—

Mr. Coulson: That is exactly what the intervenors' prayer goes to, and, also—

Judge Huxman: Do you base that on the ground that it would be inequitable for them to maintain this?

Mr. Coulson: No, sir, that they don't come into court with clean hands. He is engaged in an illegal practice and is not entitled to an adjudication that an act barring that practice is valid or invalid.

Judge Huxman: Here is the way the Court presently feels about this question, that here is a charge that this statute is void, I understand, because it violates the Federal Constitution, impinges upon the plaintiff's rights guaranteed by the Federal Constitution. Now, there may be subsidiary questions that enter into the determination of that question. Is that the main thing that we have in this case?

[fol. 114] Mr. Coulson: I think that is true. This only is a challenge of their right to be heard on that subject.

Judge Huxman: If the statute prohibits something that the plaintiffs have a right to do under the Federal Constitution, it is void. We will all agree to that, won't we?

Mr. Coulson: Yes, sir.

Judge Huxman: And if it doesn't, isn't this case at an end?

Mr. Coulson: That's right, this particular point goes to the question of whether they have a right to do it. Our contention is that they don't—didn't have the right to do it, statute or no statute, and so the statute couldn't have affected their rights.

Judge Huxman: With this explanation by the Court that we are primarily concerned with the question of whether this statute violates the rights guaranteed by the Federal Constitution, now, it may be that we have to consider some subsidiary questions, personally, speaking for myself, I fail to see that it makes any difference to that question, whether it is clean hands or unclean hands. But, [fol. 115] if the parties want to present that question, why, we have no objection to it. We will do that, and then whether we are going to give much weight to that question or not will be for the Court's determination when we come to—

Mr. Coulson: Very well.

Judge Huxman: Are we, then, at an understanding as to how we are going to proceed?

Mr. Henson: Your Honor, I would like to call the Court's attention to the motion of the attorney general to dismiss the action as to him.

Judge Huxman: We will hear that as part of the general hearing today; that is a question, of course, peculiar to the attorney general, isn't it?

Mr. Henson: Yes, sir.

Judge Huxman: He contends, in any event, they can't sue him, is that his position?

Mr. Henson: We contend that this complaint pleads no cause of action.

Judge Huxman: We will hear you with respect to that. [fol. 116] Now, gentlemen, one other thing, as to the scope or extent of this question, I think, we just had an informal discussion, and I can say for myself that I am more concerned with an adequate brief on these various questions than I am with the law—with oral argument as to what the law is. What I would like, myself, is a statement of the parties as to their various positions on this question. At the conclusion, I want a brief. What do you say, Chief Judge?

Judge Hill: I would prefer that, myself.

Judge Huxman: Judge Stanley, what do you say?

Judge Hill: We are going to take the matter under advisement, anyway.

Judge Huxman: Oh, yes.

Judge Hill: And you are going to have to write briefs for us.

Judge Huxman: It is an important question. With that in mind, suppose we let the parties proceed, so, Mr. Weigand, I guess the burden is—

Mr. Weigand: There was certain testimony taken in [fol. 117] front of Judge Hill on the application for the temporary restraining order. Would the county attorney and the attorney general agree that that transcript can be submitted in lieu of a repetition of the same testimony by the witness?

Judge Huxman: Is that agreed to by the defendants?

Mr. Henson: We would not, by entering into such an agreement, want to admit that we are a proper defendant in the action.

Judge Huxman: That is very true.

Mr. Henson: With that reservation, we will agree to it.

Judge Huxman: There is no claim that this transcript is not a correct transcript of what took place before Chief Judge Hill, is there?

Mr. Sanborn: No, sir.

Judge Hill: And that it may be considered as evidence before the three-Judge Court on behalf of the plaintiff, subject, of course, to any objection that you may want to lodge against it?

[fol. 118] Mr. Henson: Yes, sir.

Mr. Sanborn: Yes, sir.

Mr. Weigand: Now, there were no objections, if I remember rightly, except those we interposed, which we will withdraw in this hearing. If there are any other objections to the competency or relevancy of this testimony, I think it ought to be noted in the record, so we can be advised as to what is being challenged.

Judge Huxman: Suppose you offer the transcript, Mr. Weigand, and then the other parties will have an opportunity to make objections to it, if they want to.

Mr. Weigand: Do you wish this marked, Judge?

Judge Huxman: Mark it as an exhibit. Judge Hill tells me it is a part of the record in this case, anyway. It is already in the record.

Mr. Weigand: Yes.

Judge Huxman: Does anybody want to lodge any objection as to why we shouldn't consider it?

Mr. Sanborn: We don't, Your Honor, and I might not [fol. 119] be correct, but we did file, as a part of our answer, the defense that this is, in fact, a case prohibited by the Eleventh Amendment to the Constitution of the United States, in that it truly is an action by a citizen of Nebraska against the State of Kansas, and I am only stating that because we did plead it.

Judge Huxman: All right, you may proceed, Mr. Weigand.

Mr. Weigand: Now, there will be some additional testimony to supplement this record, and not to duplicate it, if the Court please. If you are ready now—or would you prefer that I make an opening statement with respect to the plaintiff's position?

The challenge is simply to the validity of the Senate Bill 366, for the reason that it violates the Fourteenth Amendment to the Constitution of the United States, the Kansas Bill of Rights, Section 1, and Article (2), Section 16, of the Kansas Constitution, and is void and unconstitutional

and cannot be enforced against this defendant—plaintiff, rather, who is a person engaged in doing the specific act which is prohibited, or allegedly prohibited, by the act, [fol. 120] and that it is not a regulatory act, but it is a prohibition act, with respect to a lawful business, which is subject to regulation but not subject to prohibition, and we rely upon Adams v. Tanner, Supreme Court of Pennsylvania, which passed upon—

Judge Huxman: Now, that is your argument, Mr. Weigand?

Mr. Weigand: I thought you wanted a—

Judge Huxman: You state to us what your position is and not make your argument.

Mr. Weigand: I was simply outlining the position so you could follow the evidence that we supplemented before we put it on, but I can put on the evidence first.

Judge Huxman: You are making your opening statement now?

Mr. Weigand: Yes, just an outline of the plaintiff's position.

Judge Huxman: All right, you proceed.

Mr. Weigand: It is the position of the plaintiff, who is a resident of Nebraska and who has, for some three or [fol. 121] four years, been engaged in this business in Nebraska, and also other states, and who has been engaged in this business lawfully in the State of Kansas since—for a portion, about eight months, of 1960, long prior to any enactment of this act; that his activities do not constitute the giving of any kind of advice or the drawing of any legal instruments that are, in fact, a legal matter; that he does give financial advice to people who, through credit buying, have not the means currently to pay all of their debts as they mature, and this act prohibits not the doing of that, if done once, but the doing of it if done periodically; that it is a prohibition of a lawful business rather than a regulation of it, and that it is, as I said, unconstitutional and void, because, first, it deals with more than one subject matter, contrary to Article (2), Section 16, of the Kansas Constitution, it doesn't have in its title the matter that they complain about with respect to the practice of law, it violates the pursuit of happiness guaran-

teed to him by the Fourteenth Amendment, which is the right to pursue any lawful calling, subject only to reasonable regulation and not prohibition, and that, therefore, the [fol. 122] statute is void and unconstitutional and cannot be enforced against him under the due process clause of the Federal Constitution.

Mr. Sanborn: Very briefly, the position of the State of Kansas, so far as I am concerned in a representative capacity, is that the business, so-called, has been declared, by judicial act of the Supreme Court of the State of Kansas, as long ago as 1935, and by the District Court of Sedgwick County, Kansas, both at that time, and with respect to this same defendant, prior to the passage of the statute about which they are complaining, to be the practice of law and the unauthorized practice of law, and the statute merely gave an additional remedy to the inherent authority vested in the Court to govern persons who would be practitioners of the law, including the United States District Court for the District of Kansas, which has jurisdiction in all sorts of matters, including, very particularly, wage earner plans in bankruptcy, and that, when this statute was passed, it merely supplemented remedies already in existence and merely declared the public policy, as expressed by the legislature of the State of Kansas, to be [fol. 123] that a criminal sanction would attach to this unauthorized practice of law, and the statute clearly points out that it does not prohibit, it isn't a prohibitory statute, it merely limits the practice of law to those who are amenable to the discipline and the ethics and the control of the courts of the State of Kansas and of the United States sitting in the State of Kansas; and that, whether this statute were passed or not would not affect the unlawfulness of the defendant's conduct—pardon me, the plaintiff's conduct, and that is the reason that he has no standing here, that what he did—any contract he entered into he knew was subject to the police power of the State of Kansas and to the control in the state of who would be its practitioners, so nothing was added by the statute except a formal—an extra remedy, and that he knew, or should have known, before he ever attempted to set up this business in the State of Kansas that it was unlawful in the state.

Mr. Coulson: Very concisely stated, it is the position of amicus curiae that the plaintiff had no legal right to engage in the business which is prohibited by the statute, [fol. 124] and that, therefore, the statute could not have deprived him of any property rights of any kind or character, or of any personal rights.

It is the position, secondly, of the amicus curiae that the legislature had the right to determine that, whether or not this was the practice of law, it required, for the protection of its citizens, the giving of advice, which this agency does not, or claims it does not, give, and was a lawful exercise of the police power of the State of Kansas, and that the Constitutional provisions mentioned by Mr. Weigand yield to the legitimate police power of the State of Kansas.

Judge Huxman: Mr. Coulson, just one question: Suppose it is subject to police power of the state, does that give the state the right to prohibit it or to regulate it?

Mr. Coulson: We contend there is no prohibition. There is a limitation to those who are authorized, who are licensed.

Judge Huxman: Well, they can't carry on this business, can they, in Kansas?

Mr. Coulson: If they are licensed, yes.

[fol. 125] Judge Huxman: Can they get a license?

Mr. Coulson: If they are admitted to the practice of law, just as you and I. That is the license.

Judge Huxman: Well, then, it prohibits the carrying on of this business by anyone but licensed attorneys?

Mr. Coulson: Exactly. It does that.

Judge Huxman: Then—and they are admittedly not attorneys?

Mr. Coulson: That's right.

Judge Huxman: Therefore, they are prohibited from carrying on this business in Kansas?

Mr. Coulson: They are until they become licensed.

Judge Huxman: Certainly, but they are not licensed attorneys and, therefore, they are prohibited under the statute?

Mr. Coulson: That is absolutely true, Your Honor, yes, sir.

Judge Huxman: Now, that is a question that, under the [fol. 126] police power to regulate, this is such a business that the police power could authorize the prohibition, unless they first go through law school and become practicing lawyers, that is the question?

Mr. Coulson: That is the question before Your Honor.

Judge Huxman: It is a difficult question; at least, presently, it is to me. It may become clear when I get the briefs.

Mr. Coulson: Obviously, we aren't agreed, Your Honor, or we wouldn't be taking up your time here.

Judge Huxman: Are there any further statements by any of the parties?

Mr. Weigand: Might I clarify one thing with respect to the positions: The position taken by Mr. Coulson, I submit, by a careful reading of this text, is not open to the lawyer engaged in the general practice of law if he limits himself solely to this business. Even a lawyer, you or I, Judge, could not carry on the debt adjusting business if we do it exclusively, as this act is worded. We can only do it if we incur it incidental to the general practice of [fol. 127] law, which is an arbitrary and unreasonable thing, even if it was otherwise justified, and I wanted to emphasize the position, the issue, with that statement, because you can see clearly from a reading of this, from the Pennsylvania Supreme Court, which upheld the contention that this identical act, under a different label, labeled "budget planning" instead of "debt adjusting", and the only difference, the identical words passed by the legislature of Pennsylvania in 1955, we submit, were adopted by Kansas after the Pennsylvania courts had declared that act unconstitutional; and there is also a rule of law that, when a state adopts a statute from another state, it adopts the construction of that statute by the state, and I submit, Your Honor, that that is a point—

Judge Huxman: Mr. Weigand, that is true, ordinarily, when they adopt a statute, but if they adopt a construction the courts have placed upon it, saying, "You can't do that", why would they pass the act?

Mr. Weigand: I don't think, Your Honor, this act was ever adequately considered, but that is a factual matter [fol. 128] that I think is closed to us in this proceeding.

Judge Huxman: I'll go with you that, when one state adopts a statute of another, they adopt the ordinary construction placed upon that statute, but it would be a little difficult for me to go so far as to say that they adopt a construction which says you can't do it.

Mr. Weigand: The construction which the Pennsylvania court placed upon it said that the act itself means a situation that is forbidden by the Constitution of the United States.

Judge Stanley: Mr. Weigand, this was the Supreme Court of Pennsylvania?

Mr. Weigand: Superior Court of Pennsylvania. I don't know whether it is the supreme. It is in 155 Atlantic (2d), and it is the superior court.

Judge Stanley: The appellate court?

Mr. Weigand: Yes.

Judge Stanley: Was that decision based on the decision of the court that the act violated the Constitution of the [fol. 129] State of Pennsylvania?

Mr. Weigand: No, of the United States and, also, the Pennsylvania Supreme Court, Mr. Bell tells me, did the equivalent of denying certiorari to the superior court, that that is a final decision in Pennsylvania, and the Pennsylvania court predicated it on Adams v. Tanner, and, as late as May of 1960, the Supreme Court of Kansas quoted the Adams v. Tanner ruling that was adopted there and applied it to the unconstitutionality of a state statute which was challenged by a resident of Kansas in Kansas, called the Auctioneer's Itinerant Veteran Act.

Judge Stanley: I assume you will mention that in your brief.

Mr. Weigand: It will be in the brief, Judge.

Judge Huxman: Do either of the parties litigant want to address the Court on the issues before we hear from the attorney general as to his motion to dismiss the attorney general in this action? If not, we will hear from the assistant attorney general as to why you think we ought to dismiss the attorney general.

Mr. Henson: Your Honor, if I may give the Court a [fol. 130] little background. We filed our motion to dismiss, Your Honor, I believe it is Rule 12(b), some time ago, believing at that time that our motion could be heard prior to the time the Court heard this matter on the merits. We were informed by a member of the Court that that would be impossible. Therefore, we filed an answer, which we believe amounts to a general denial of the plaintiff's complaint, and in our answer we have reincorporated the grounds of our motion to dismiss.

Briefly stated, we feel that plaintiff's complaint, which alleges the passage of Senate Bill 366, alleges that the Senate Bill is applicable to him and his business and that the attorney general, having over-all supervision of criminal prosecutions in the State of Kansas, has indicated that said statute, Senate Bill 366, is valid and should be enforced. We would like to call to the Court's attention, first, the fundamental rules often announced by the Supreme Court of the United States, that the judicial power of the United States extends only to cases and controversies. They have said that a case or controversy is a judi- [fol. 131] cial action in which parties present present adverse interests whose contentions are submitted to the Court for adjudication. That is from the case of Muskrat v. United States. And, in a very recent case before the United States Supreme Court, the case of Poe v. Ullman, in 367 U.S. 497, which appears in 29 Law Week 4820, in which the Supreme Court of the United States refused to pass upon the constitutionality of the laws of the State of Connecticut forbidding the sale of anti-contraceptive devices because the plaintiffs had failed to show that there was any real threat of enforcement of that statute against them by the defendant, the Court called—in their opinion, called attention to the series of rules which the Federal courts have developed under which they avoid passing on constitutional questions, unless necessary to decision of, and I quote, "antagonistic demands actively pressed which make resolution of the controverted issue a practical necessity". We think it is inherent in that statement that the demands actively pressed must be pressed by the defendant.

Judge Huxman: Is it your position that the attorney general is not a proper party because there is no immediacy [fol. 132] of enforcement by him, there is no threat of enforcement, and, therefore, there is no controversy, or that, in any event, he isn't a proper party?

Mr. Henson: We feel that this complaint as it is stated, which does not plead that the attorney general has been directed by the Governor of Kansas to enforce this statute—

Judge Huxman: Is it your position that the attorney general will not undertake to enforce this statute?

Mr. Henson: We contend that, under the facts as plead in the complaint, which, I think, is all that our motion to dismiss goes to, do not constitute a cause of action.

Judge Huxman: We have been liberally construing pleadings and, if it is a fact that the attorney general has no intention of enforcing this statute, then there might be a question that there is no actual controversy, but suppose the attorney general, in fact, is intending to enforce it, then it may be an effective allegation that he is doing that—

Mr. Henson: I will tell the Court now that, as the at- [fol. 133] torney general views his powers, he has no right to file a criminal information in the district courts or the county courts of the State of Kansas.

Judge Huxman: He has a right to direct county attorneys to enforce the law, doesn't he?

Mr. Henson: We do not think that he has the right to direct the county attorney to file a criminal case or to file one himself, unless directed by the governor to do so. He does have the right to file ouster proceedings against a county attorney who he feels is not fulfilling the duties of his office, but, because of that right, he doesn't feel that it is his province to usurp the discretion of county attorneys in enforcing the criminal law within their counties. We feel that the Statutes of Kansas give the attorney general the right and the duty to appear before—appear on behalf of the state in the supreme court. We feel the statutes give that right and duty to the county attorney, as far as district courts are concerned. Senate Bill 366 is a criminal statute.

Judge Huxman: Then your position, if I get it, as far as the attorney general is concerned, is that he has no part [fol. 134] in the enforcement of this statute and, therefore, he is not a proper party?

Mr. Henson: We feel, as a matter of law, that he has no part in the enforcement of this statute under the facts plead in the complaint; therefore, he is not—

Judge Huxman: Does he have any part by virtue of his office in the enforcement of the statute?

Mr. Henson: Of this particular statute?

Judge Huxman: Yes.

Mr. Henson: Well, if he felt that a county attorney was being delinquent in his duties.

Judge Huxman: In enforcing the statute—

Mr. Henson: In carrying out the duties of his office, so as to justify that he be ousted from office, in failing to enforce the law, I suppose the attorney general would file such actions, but I can assure the Court that he does not intend to interfere with the lawful powers given county attorneys to exercise their own discretion. It would have [fol. 135] to be a pretty arbitrary and extreme case before he would proceed, and, therefore, because of the view which we take of the attorney general's powers, we feel that we are asserting, at this point, no antagonistic interest to this plaintiff and, therefore, we feel that we are not, at present, involved in the case in controversy with this plaintiff. We have a difference of opinion, perhaps, as to whether this Senate Bill 366 is valid, but differences of opinion, we submit, do not amount to cases for judicial consideration, particularly where a Federal court is asked to annul the validity of a state statute.

Judge Huxman: I get your position, then, to be that, at present, the attorney general is not contemplating any affirmative action looking toward the enforcement of this statute.

Mr. Henson: That's correct, under the facts as they now exist. We feel we do not have the authority to do so under the facts as they now exist.

Judge Huxman: Mr. Weigand.

Mr. Weigand: If Your Honor please, we have searched [fol. 136] for the reason, if the attorney general does not

want the onerous duty of trying to uphold this invalid law, we would welcome it if we could be assured that he would not take any subsequent action, and, in the application for the restraining order, Judge Hill will remember, I asked counsel if he would assure us, if he was not enjoined, he would not take any action to enforce this statute against us, and that was refused.

Now, there hasn't been an overt threat, an actual statement by the attorney general that "I am going to enforce this statute against you", but, in the case that I mentioned in 186 Kan., decided May 1960, by the Kansas Supreme Court, the county attorney of Cowley County, which was the place where that resident lived, and the attorney general of the state, were both named by the state, the Supreme Court of Kansas considered the matter and upheld the contention of the plaintiff as against both the attorney general and the county attorney, that the statute was unconstitutional. We have made a search of the cases where the Kansas Supreme Court has knocked down statutes with respect to the title not being sufficient to encompass all [fol. 137] of the subject matter of the act, and there are several of those cases, and in the case of Capital Gas & Electric, the case was against Boynton, the attorney general, we have found no precedent where the attorney general has been left out, validly, of a state statute. There are cases against city ordinances where he has not been made a party, but, with respect to a state statute, we can find no case where he has been omitted, and we have found cases which lead us to believe that he has a common law duty to enforce every act of the State of Kansas which he considers valid.

Now, if he will state that he considers this invalid, then he would have no duty to enforce it and he could be out, but, unless it is invalid, if it is a statute of the State of Kansas and it isn't prosecuted—Keith Sanborn has got no jurisdiction outside of Sedgwick County. My client may desire to go to Topeka and open one of these offices, may desire to go to Kansas City, Kansas, and open one of these offices. The county attorney there may not prosecute. Will the attorney general permit the statute to rest unenforced? We think not, and we think—we do not have to have an overt

[fol. 138] threat of the chief law enforcement agency of the state with respect to the constitutionality of the state statute—we have a brief on the matter.

Now, if Your Honors would decide that he has no duty to enforce this and he is not going to, so we are protected in the event that you find that this statute is unconstitutional, fine and dandy, we have no desire to bring him in if he doesn't desire to uphold the statute, but we do desire to protect our client's interest against what we consider to be an unconstitutional statute, in the event you so determine that we are correct in that position.

Mr. Henson: Your Honor, it is really not up to us to furnish the type of action that will fully protect the interests of Mr. Weigand's clients. We feel that, if a county attorney in some county other than Sedgwick County would file an action against his clients under Senate Bill 366, that that would be within the discretion of that county attorney, and the fact is that we don't feel that he can get a binding adjudication on all county attorneys of the State of Kansas by joining the attorney general, because we don't think we have power to control all 105 county at-

[fol. 139] torneys in the State of Kansas.

Now, as to this case in 186 Kan. involving the New Goods Public Auction Law, it is true that the attorney general was a party in that action. However, whether or not the case stated cause of action against the attorney general was never raised in that case, was never passed upon by the Supreme Court of Kansas. We are raising it in this case, and we feel properly so. We feel we should not be involuntarily joined as a defendant in any case where an individual wants to assert the unconstitutionality of a state statute. We feel we are proper parties only when we are proposing, or they plead that we are proposing, to take some action which affects their interests. We do not believe the plaintiffs do so in this case.

Judge Huxman: Is there anything else by the attorneys for either the plaintiff or defendants? You have stated your position.

Mr. Weigand: We have a memorandum brief that we can submit on the matter.

Mr. Sanborn: Your Honor, I would like to say that we are sorry about the error into which the Supreme Court [fol. 140] of Pennsylvania has been led, but other courts of last instance, such as the Massachusetts Supreme Court, have viewed the Constitutional issues differently.

Judge Huxman: You can set that out in your brief, of course.

Mr. Weigand: If Your Honors are ready to hear evidence now—

Judge Huxman: Do you want to put on additional evidence?

Mr. Weigand: Supplementary evidence to the record that we made.

Judge Huxman: Before we make a final disposition, suppose we proceed with that.

* * * * * * *

[fol. 141] Judge Huxman: You may call your first witness.

Frank C. Skrupa, called as a witness on behalf of the plaintiff, having been first duly sworn, testified as follows:

Direct examination.

By Mr. Bell:

Q. Will you state your name and address, please.

A. Frank C. Skrupa, Omaha, Nebraska.

Q. You are the same Mr. Skrupa that testified before Judge Hill on a hearing on a temporary restraining order?

A. Yes, sir.

Q. Now, we will attempt here not to be repetitious of any testimony that appears in the previous transcript, since that has been admitted. But, to lay a foundation, you testified at that time that you were engaged in business in Omaha and Wichita, and that your business consisted of what is defined by Senate Bill 366 as the busines of debt adjusting, is that correct?

A. That's right, sir.

Q. Now, disregarding a question as to whether or not the title "debt adjusting" is appropriate, but understanding

that we are talking about the business which is attempted [fol. 142] to be prohibited by the Kansas act, can you give us an idea, a little background, on how long this business has been going on in the United States, how extensive it is, and exactly what it does?

A. Well, sir, the business is nothing new. I personally know of a company in Minneapolis and one in Detroit that has been in existence for a quarter of a century, at least, and they both have excellent reputations and—in both of those states there are regulatory provisions, they are licensed. As a matter of fact, Michigan just recently passed a licensing bill. There have been—in Omaha, there were businesses there long before mine, for, at least—in fact, I know the manager—the ex-manager of the one place, and he tells me they would have been there, I believe, their tenth year. I have been in business there since August of '58. Previous to that time, I had some experience in that business in Detroit, Michigan, and the fellow that I was in business with, my ex-partner, he has a number of offices throughout the east, in Illinois and Indiana and Michigan.

Q. How extensive, if you know, then, is this type of business throughout the United States?

[fol. 143] A. Well, sir, I would say that there is, probably, in every large city, every metropolitan area, there is someone engaged in this practice.

Q. Is this always run by private businesses or—

A. No, sir, it is not. As a matter of fact, in several places, I know of one personally in Phoenix, Arizona, that is a mutual thing that has been set up by a number of creditors, and they have set this up for the purpose of helping themselves and helping people who are their debtors to get out of debt; and I have also heard, in places, although I have no proof of this, that this is also—has also been done by an agency of the Community Chest.

Q. Can you tell us what there is in our society that gives rise to this type of business?

A. Well, sir, I think we all know that the credit business, and the consumer credit business, in particular, has gone up spectacularly since the end of World War II. As a matter of fact, the yearly amount of interest just on consumer debt, not industrial debt or property debt, amounts to eleven billion dollars a year. Now, certainly, this is going

to affect a lot of people and there is going to be a lot of people in debt that are unable to handle this situation themselves.

[fol. 144] Q. What types of people and in what situations are these people when they come to you for financial help?

A. Well, sir, when these people come to us for financial help, they come from all walks of life. I would say, primarily, that they are what you would call the working man, but we do deal with all types of people and from all backgrounds. As a matter of fact, we have clients that come to us who have no financial problem at all, salesmen, for instance, who are on the road a great deal and simply find this an easier method of disbursing their funds to their creditors. We merely set up a payment arrangement with them, they pay us so much each pay day, and we distribute this to their creditors for them. That's all we do, we don't give any other type of advice except financial.

Q. How about the people who actually have a financial or budgeting problem?

A. We attempt to work out a program to fit their bills within their income and satisfy their creditors over a period of time.

Q. Are those people that don't have enough income to meet these payments, or—

A. That's right. They either do not have enough income [fol. 145] to meet these payments, or, I would say, roughly speaking, that 50 per cent of the people that come to us do have enough money to meet these payments, but simply do not have the—either the mental attitude or the ability or the desire to do this themselves, and let it go, and constantly find themselves in economic difficulties.

Q. Where do these clients come from that come to you?

A. Many of them come from referrals. We have—from other clients. Some from other creditors, and, also, we do advertise.

Q. Where are these people referred from? I'm sorry, I didn't—

A. Some are referred from clients that we already have or customers that we already have, and some are referred, quite a few of them are referred, from creditors who realize that these people—they are having some problem.

Q. Have you ever had any referrals from banks?

A. We have, yes; in Wichita, we have had a number of referrals from the Fourth National Bank; in Omaha, we have referrals from everyone, including, by the way, attorneys, collection attorneys.

Q. You have had referrals from attorneys?

A. Yes, sir, very definitely.

[fol. 146] Q. Do you know whether or not there have been any complaints filed against you with the Better Business Bureau in either Omaha or Wichita?

A. No, sir, to the best of my knowledge, there have been no complaints filed.

Q. You have done some checking on this?

A. Yes. Well, we don't do the checking so much as the people that come to us do. We are often told, "Well, we called the Better Business Bureau; you're fine by them".

Q. Can you give us any idea as to the number of people that, in your opinion, you have given some financial assistance to in the last three years?

A. Well, it would depend on where you draw the line and what their own feelings in the matter were, but, simply, it's been over a thousand. If they are clients of ours for at least two or three months, I know that we have given them some help. They don't have to be paid out with us in order for them to receive help.

Mr. Sanborn: Excuse me, I would like to get some idea, so I will understand, whether we are talking about the State of Kansas, something within this man's knowledge or just visiting. I can't delimit it.

Mr. Bell: Plaintiff is attempting to show that this is [fol. 147] a lawful business, that it is recognized as a business which is helpful to the community as a whole, in the broad sense, and that it is not inherently immoral or dangerous to the public welfare, and I think, in that connection, we are entitled to show not only its Wichita operation, but his Omaha operation. I would be glad to have him testify that his testimony applies to both operations. We are simply trying to show a broad prospective for this type of business.

Judge Huxman: I think you have a right to show the general nature of that business, but it seems to me that you

have done that, and going into great detail, broad expanse of the country, is hardly necessary, is it?

Mr. Bell: I will ask no further questions, Your Honor, along that line.

By Mr. Bell:

Q. Mr. Skrupa, can you tell us, you have alleged in your petition that you will be irreparably injured by the enforcement of this statute. Can you tell us what effect just the mere existence of this statute has had on your business?

A. Well, I believe it was in March that we had a total of some 250 accounts, and I think that since that time, approximately, now, we have anywhere from 150 to 175, and, of [fol. 148] course, this adverse publicity has done us no good.

Q. And do you know of specific instances where debtors have refrained from continuing their plan of payment through you merely because of the existence of this statute?

A. Yes, I know of it through the statements of our local manager.

Q. And you have previously testified, which will appear in the transcript, the effect that the enforcement of this statute would have on your business, and I don't think it is necessary to go into that at this time.

Mr. Bell: I believe that is all, Your Honor.

Judge Huxman: Any cross-examination?

Mr. Sanborn: Yes, sir.

Cross examination.

By Mr. Sanborn:

Q. You have not had any referrals from lawyers in the State of Kansas, have you?

A. I wouldn't know that, sir.

Q. You do not know of any referrals from any lawyers, do you?

[fol. 149] A. I, personally, do not know of any. I have heard that there was, but I wouldn't want to say there was.

Q. In the conduct of your business you purchase advertising, do you not?

A. Yes, sir.

Q. And in your advertising you hold out that you can solve the financial problems of persons who aren't able to pay their debts, don't you?

A. Yes, sir, within reason.

Q. And you state by your advertising that you can set up a schedule and cause their debts to be retired, if they will follow your plan which you advertise, is that not right?

A. That's right.

Q. And when people answer these advertisements and come to your office, do you find that they are people who are indebted and are having trouble with their creditors?

A. Yes.

Q. And do you find they are people who have been pressed by creditors for the payment of money?

A. Some of them; not all of them.

Q. About how many of them would you say are people that are worried about not being able to pay their bills and read your ad and come in, or listen to your TV—

[fol. 150] A. All of them have a problem, but it is not necessarily one that they are being pressed. They may anticipate a problem.

Q. We are just discussing, I hope, the ones that just aren't able to take care of their problems.

A. All right.

Q. Now, about what part of your business is that?

A. Well, sir, again, actually, they wouldn't be there unless they thought that they had some problem that they couldn't handle it; they are not going to come to us to pass the time of day.

Q. You hold out that you—

A. Unless I don't understand your question.

Q. You hold out that you consolidate people's debts, too, don't you?

A. Yes, sir.

Q. And you hold out that a person who owes $3,000 can pay as little as $35 a week under your plan?

A. Yes, sir. We say, "You may pay as little as $35 a week".

Q. Do you also hold out that people need no security to come to see you?

A. No, sir, they don't need any security—

Q. That they need no co-signers?

[fol. 151] A. That's right, they do not.

Q. You do have them execute promissory notes, don't you?

A. I think we did at one time. I'm not so sure—in fact, I know it is no longer being done.

Q. When did you stop doing that?

A. Oh, some six months ago, but I might add that we have never attempted to collect on one of our promissory notes after a client left our services.

Q. What is your initial fee that you charge people who come in?

A. We have no initial fee. There is no charge to come into our office and talk over a man's problems.

Q. Did you bring with you, at our request, the records pertaining to Mr. Hedrick?

A. I believe our attorneys have them.

Q. Have you gone over these—the names of these people we submitted to you and attempted to locate the records pertaining to Mr. Hedrick?

A. I say I believe they have them, yes, sir.

Q. I ask you, Mr. Skrupa, whether you went over these with your attorneys—

A. I looked them over, yes.

Q. All right, now. You charged Mr. Hedrick an initial fee when he came in, didn't you?

A. No, sir. If you mean that he give me money the day [fol. 152] he came into my office, perhaps he did; I don't know, sir.

Q. Do you misunderstand my question? I am referring to a fee given to you, not money deposited to pay creditors.

A. Sir, we have no initial fee or initiation fee.

Q. Now, Mr. Skrupa, I don't wish to argue with you. I just am trying to bring out for the Court here that when somebody comes into your office you talk to them and try to persuade them that this plan is a good thing for them, you explain the merits of the plan, don't you?

A. That's right, sir.

Q. And, in explaining the merits of the plan, you adver-

tise to get them and then, once they are there, you attempt to sell your product to them, don't you?

A. That's right, sir, we attempt to sell our services.

Q. And you do so in order to get them to employ you to receive money out of their funds periodically and pay you money for distributing it to creditors?

A. That's right, sir.

Q. You aren't authorized practitioners of the law, any of you, are you?

A. No, sir.

Q. You do not explain to people their rights under the [fol. 153] laws of the United States, do you?

A. No, sir, we don't feel that—we feel that, not being practitioners of the law, that that is not our right to do so. We are merely interested in their debt problems, we are not interested in any legal problems that they might have.

Q. You are interested in selling your product, and the product being to ease their mind of worry over their debts, is that it?

A. That's right, and, also, to set up a budget system for them so that, over a period of time, they can get out of debt completely, or partially out of debt, or to the point where they feel they can handle their affairs.

Q. What is the income range of these people who are the ones that you have described as those that had financial troubles?

A. Sir, we have had—it could be anything; it could be from people all the way, earning social security payments, all the way up to fifteen, twenty thousand dollars a year, in the case of some salesmen.

Q. The people on social security, you set up schedules for them, too?

A. Well, some of them would have a part-time job or something. What I am trying to say is that there is no [fol. 154] limitations as to the amount of their income.

Q. Well, now, you have attempted, because—

Judge Huxman: Now, Mr. Counsel, we have been rather liberal in allowing questions, but the Court feels that this line of questioning has very little value in determining the

fundamental question we are going to have to answer. It is conceded that they do this as a business and for profit, and that people come in for the purpose of having their debts adjusted. They make deposits which are distributed to creditors. Now, isn't that about it?

Mr. Sanborn: I'm sorry, I'm not getting my point across to the Court.

Judge Huxman: What are you trying to develop with this testimony?

Mr. Sanborn: I am trying to develop what they do and have the Court—in our argument, we will certainly expand on what they do not do.

Judge Huxman: I thought the witness had clearly testified what they did, they advertised, and that people in distress came to them and they worked out a plan for them and arranged for weekly or monthly deposits to be dis- [fol. 155] tributed according to the plan, isn't that their business, and collect a fee for it?

Mr. Sanborn: Yes, that is true.

Judge Huxman: Well, isn't that about the business?

Mr. Sanborn: Yes. I was just trying to get the foundation laid, because I wanted to ask him some—

Judge Huxman: Don't pursue it too far, because I think there is no question about the nature of their business.

Mr. Sanborn: Yes, Your Honor.

By Mr. Sanborn:

Q. At our request, before their hearing did you attempt to analyze your business records with regard to how many people signed up with you, but the plans were abandoned within a period of 60 days?

Judge Huxman: Speaking for myself, I fail to see that that has any relevancy whatever. I don't see how—

Mr. Sanborn: May I state the grounds, then, Your Honor, because I know I'm not getting across.

Judge Huxman: All right, state the reason.

[fol. 156] Mr. Sanborn: We think, Your Honor, that the evidence will show that—just what our legislature is trying to guard against in the exercise of its police power by what happens with their plans and as to the—frankly, a Kansas

case upon which we rely and a—which is Depew v. Wichita Association of Credit, and a Massachusetts case upon which we rely, which is the Boston Bar Association v. Home Budget Service, this type of evidence is what the Court considered in arriving at its conclusions that the defendant was, in each instance, engaged in the unauthorized practice of law, and it was just this type of—

Judge Huxman: How many of these plans were abandoned won't show whether they were engaged in the practice of law or not, would it?

Judge Hill: Are you trying to show bad faith on the part of this man?

Mr. Sanborn: We are trying to show, without going into the personal good or bad faith of the individuals, we are trying to show that the plans are bad for the people of Kansas and they don't have—they can't—well, I'm getting into an argument, now, but the fact is that the absence of giving people legal advice that are in a lot [fol. 157] of trouble and can't pay their debts, and the absence of advising about wage earners' plans and bankruptcy laws is a very bad thing for people.

Judge Huxman: It may be, but it surely couldn't be claimed that is practicing law, failing to give advice, would it? It might be bad.

Mr. Sanborn: Yes, sir, certainly. Judge Huxman, I would like to take a minute here. This is the whole point of the cocoanut, the whole point of the case, the very point of it, that a man who gets people—lawyers don't advertise, Your Honor, but they practice law, and part of their practice of law is helping people out with financial troubles, and most clients who come through the county attorney's office, I don't know about Mr. Coulson's office, but most who come through our office, have a lot of financial troubles, and a person who reaches out and gathers in these people, by advertising, to his office, and causes them, sells them on, getting a contract with him, when their problem may very well be that they need to get under a wage earner's plan, or they may need to go into bankruptcy, or they may need to [fol. 158] contest some unwarranted claim that has just got them sick with worry, which they, in this transcript that shows, they don't even attempt to go into, is certainly

not only an encroachment on the practice of law, it is an encroachment upon the stability of the general welfare of the people of Kansas, which the state has a right to protect, and, as the Massachusetts Court said in their case, it is every bit as bad that they don't advise people about their total problem, because they are not equipped professionally to do it, as that—

Judge Huxman: Go ahead and develop it, but don't go into it in great detail, because, to me, it has no value. I have clearly in mind the plan or scheme under which they operate. There is no question about that. That's been developed. How many plans fail, we don't care about that.

Judge Hill: I think it is the very contention of the plaintiff that they do not give any legal advice.

Mr. Weigand: It is, Your Honor.

Judge Hill: They admit just what you say, even though [fol. 159] these people may need or desire legal advice, the plaintiff admits that they give no legal advice, so I think we can assume that.

Mr. Coulson: May I add a word here, Your Honor? Judge Hill has, perhaps, seen the exhibits which were offered at Wichita, I don't know whether the other Judges have or not. These contracts into which the debtors enter provide for a minimum fee of $25. We think the evidence will show that it is not disclosed to the prospective client, as they call him, the debtor, what consequences will occur if the plan fails, and that the usual situation is that the debtor comes in, is charged a fee of $25, the plaintiff sends out form letters to his creditors, his creditors forthwith issue garnishments, and that is the end of the plan, and the plaintiff has the $25. That is what we think the evidence will show.

Judge Huxman: That may be wrong, but does it constitute practicing law?

Mr. Coulson: It doesn't make any difference whether it constitutes the practice of law or not, Your Honor. The question is whether it is a practice which the legislature of Kansas can forbid.

[fol. 160] Mr. Weigand: May I submit, Your Honor, there is nothing in the text of this act that goes to what

counsel has just stated, and it is obvious, from the very simple reading of the act.

Mr. Sanborn: We are not dealing with law in a vacuum, Your Honor, we are dealing with law as it affects people.

Judge Stanley: Aren't you handling this now as though you were prosecuting for violation of this act already and attempting to show bad faith on the part of this witness? Here is an act here that says debt adjusting, which defines it, is unlawful. Now, if there is such a thing as debt adjusting which may properly be done and debt adjusting as you seem to contend this man does it, I don't see how that would enter into the question we have to decide today. I think we are here to decide whether an act which makes unlawful any business, without going into whether that business is properly conducted or not, is a violation of the Federal Constitution.

Mr. Coulson: Your Honor, if he is engaged in a continuing fraud, do you say that you are not to take that [fol. 161] into consideration in determining whether he has a business which is entitled to protection?

Judge Stanley: Isn't this action an action designed to determine whether this act, whether it is this individual or any other individual, whether this act is, in itself, constitutional under the provisions of the Fourteenth Amendment? Now, here, it seems to me, we are going here into a question of whether this man conducts a business in the way in which it should be conducted.

Mr. Coulson: I think what we are going into is what the legislature went into in determining the act should be passed, and what we are concerned with here is the reasonableness of that determination.

Judge Huxman: Here is what the act prohibits: It makes it unlawful for anybody to engage in the business of debt adjustment, and then exempts those engaged in the practice of law, isn't that the spirit of the act?

Mr. Coulson: This man asked to have his business—

Judge Huxman: Have I correctly interpreted what the act provides?

Mr. Coulson: Yes, except "debt adjusting" is not defined [fol. 162] in the act. This man objects to disclosing what debt adjusting consists of, as he practices it.

Judge Huxman: Here is what the act says, in plain words: "Whoever engages in the business of debt adjustment shall be guilty of a misdemeanor". That doesn't make any difference, whether he engages in it in good faith or whether he is guilty of fraud in the carrying on of that business. "Whoever engages in the business of debt adjustment shall be guilty of a misdemeanor and, upon conviction", it sets out the penalty, and then it says, "Provided that the provisions of this act", debt adjustment, "shall not apply to those situations involving debt adjustments engaged in in the practice of law". That is all we are concerned with. We are not concerned with whether they are guilty of fraud in debt adjustment or not.

Mr. Coulson: The evidence is offered to show you what the business of debt adjusting consists of.

Judge Huxman: That's been quite clearly established.

Mr. Coulson: Oh, no, oh, no, only from the standpoint [fol. 163] of what that party wants you to hear.

Judge Huxman: He is asking this witness how many of these plans fail.

Mr. Sanborn: Your Honor, you see, they got up and gave you a very glowing account of this—

Judge Huxman: Let's not say a "glowing account". They didn't give any glowing account. They explained their business in very prosaic and understandable terms, as to what they are doing or attempting to do. Whether they have a right to do that or not, that is our question, but the act specifically says that no one can engage in debt adjustment, putting it in my own words, unless that debt adjustment is done in the lawful practice of the law. Now, that is what the act says, doesn't it?

Mr. Sanborn: Yes, sir.

Judge Huxman: All right. Now, how many plans fail, that is what I am saying, we are going way beyond anything that has any value.

Mr. Sanborn: I can't understand why—

Judge Huxman: Before we proceed with this question, what do you want to show by this line of questioning, fur- [fol. 164] ther? How many plans failed?

Mr. Sanborn: I want to show the experience of it, Your Honor, yes, sir.

Judge Huxman: I think the Court is unanimously of the view that it is not interested in that line of testimony.

Mr. Sanborn: This is one of the things we asked them to look up before trial.

Judge Huxman: You may have asked them to look up a lot of things we don't think are competent.

Mr. Coulson: Your Honor, I think—

Mr. Sanborn: May I read from this New Jersey case, so we can—it states the position better than I can, Your Honor.

In this American Budget Corporation v. Furman, which is in the advance sheets of the Atlantic Reporter, 170 Atlantic (2d), on Page 63, in which these same constitutional questions were raised by the American Budget Corporation, these same Federal questions were raised, the Court, in going into this type of questioning, said, "The legislature could have concluded that, while some debt ad-
[fol. 165] justers performed a commendable service, many others committed frauds and abuses and added little to the smooth functioning of the economy, serving mainly to increase the burden of debt upon the typical user of consumer credit who invokes their aid, without substantially furthering his attempts to liquidate his pre-existing obligations. Suffice it to say that the legislature presumably has weighed all of the information at hand before resolving the question of the need for prohibitory legislation.

"It is possible to quarrel with almost any legislative decision, but debatable questions as to reasonableness are not for the Courts, but for the legislature, which is entitled to form its own judgment.

"Judicial interference in this regard would constitute an invasion of the legislative function. Judicial interposition may be had only where there is no real or substantial relation between the legislative act and a valid public interest under the police power or the measure is, beyond all question, a palpable invasion of rights secured by the organic law. The expediency of the statute is for the law-making
[fol. 166] body alone.

"The challenge to the validity of the statute under consideration, on the ground that it denies the equal protection of the laws, is, in effect, an assertion that the clas-

sification imposed by the legislature is unreasonable. The burden of demonstrating that a statute contravenes the equal protection clause is extremely formidable, as is attested by the long trail of failure. In addition to the strong presumption of constitutionality with which all organic challenges are approached, one who assails a statute on this ground must contend with principles of unusual elasticity."

And I am just trying to follow what the Court put in this judgment.

Judge Huxman: I know, but if you would want to show that this person—that there has been a lot of fraud, I don't know what effect it would have, but that is not what you are trying to establish. You are trying to establish how many of these plans have failed, and so on. That doesn't show fraud.

Mr. Sanborn: Your Honor, I am getting in trouble here. I don't want to argue with the Court. I thought one of [fol. 167] the things you would be considering was whether or not there was any reasonable relationship to the police power of the state in an act of the legislature, in reaching your decision as to whether this was a constitutional enactment, and that was the purpose, to show both sides of the coin.

Judge Huxman: Yes, but what is the reasonable relation there under the police power? What do you claim the legislature tries to stop here? I don't care what some other Court said about it.

Mr. Coulson: The legislature, Your Honor, has said that this is not a—something that can only be practiced by lawyers. We are trying to offer the testimony to show why they said that, and they could reasonably arrive at that conclusion.

Judge Huxman: This testimony doesn't show why only lawyers should do it, doesn't, to me. The act sets out what constitutes debt adjustment. That is what the act says, "These things constitute debt adjustment". A man might enter into that debt adjustment in the best of faith, carrying it out honestly, fairly, without fraud upon any- [fol. 168] body, but, having defined what that business consists of, the legislature said nobody can do that but lawyers.

Mr. Coulson: No, Your Honor, the legislature did not define debt adjusting. The legislature says the business of debt adjusting is prohibited when any of these acts are done.

Judge Huxman: Wait a minute, here is what the act says itself: "For the purpose of this act, 'debt adjustment' means", and then it says what debt adjustment is.

Suppose we give the reporter a recess and the Court a little time to get out of its fog and come back in about ten minutes.

(Thereupon, at the hour of 3:00 o'clock, p.m., the Court took a brief recess.)

Judge Huxman: Gentlemen, here is the way the Court feels about this line of testimony. I will say, for myself, at least, I doubt that there is a disagreement, we fail to see too much relevancy in this testimony. We don't want to shut anybody off, but, if the object is to develop the general nature of the operation of this business, if that is what you are trying to do, how many plans failed and [fol. 169] how many paid out, those ultimate facts, that you ought to be able to stipulate and agree to that, rather than detailed examination. Is that what you are trying to develop, Mr. Attorney?

Mr. Sanborn: Yes, sir, that is a part of it.

Judge Huxman: What else are you trying to develop?

Mr. Sanborn: Well, we would like to develop when they collect the fee and what they do next.

Judge Huxman: For what purpose? What is the object of eliciting—I am asking for my own information.

Mr. Sanborn: The purpose of that is because we think that this will clearly show to the Court that the man gets the ad and then he comes in, and they explain the plan and collect the payment, and then they go out and call the creditors, and all the creditors swarm down on the man and he gets garnishments, and then the initial payment is retained. We think—I am giving you hearsay from another lawyer, that that happened to his client.

Judge Huxman: You are what?

[fol. 170] Mr. Sanborn: A lawyer had this happen to his client.

Judge Hill: I think, if you have a specific fact that you want to prove, I see—counsel probably will stipulate and agree to it, if you have specific cases. He won't stipulate to the conclusion, I doubt that.

Mr. Coulson: We would be glad to ask them, as counsel questions and see whether we can agree, but they haven't furnished us with any information. They've got it present here, and we are trying to bring it onto the record in some fashion. We don't care how it's done.

Judge Stanley: I gather from what has been said here that there had been a request made of counsel to bring here today certain information, is that correct?

Mr. Sanborn: Pertaining to certain named plans or certain named debtors.

Judge Hill: How many?

Mr. Coulson: Four.

Judge Hill: Take them one at a time and ask him.

Mr. Sanborn: I asked about the Hedrick, and then we have Nickerson.

[fol. 171] Judge Huxman: Take each of these four and ask the witness about it, briefly.

Judge Hill: Or ask counsel if he will stipulate to that.

Mr. Coulson: He didn't give us the information, they haven't furnished us with anything.

Judge Huxman: You have the information on those sheets, haven't you, Mr. Coulson, as you claim the facts are?

Mr. Coulson: No, we have to elicit from this witness—we know the experience lawyers have had, but what—what their clients come in and tell them, but this is the only one who can testify to it. He has the records.

Judge Huxman: If you have a particular case, why don't you ask this witness if he knows about that case?

Mr. Weigand: Might we, for the record, Your Honors, state the position of the plaintiff: We have brought into court, at the request of counsel, four files with respect to four people with whom the Wichita office made contracts. We have those files, but we would point out—will be glad [fol. 172] to give them to Court and counsel to look at, but it is the position of the plaintiff that this law does

not deal with the performance of these contracts, that the law prevents the making of a contract—

Judge Huxman: I understand, but we are now dealing with the introduction of those files, the substance of those files, in evidence, aren't we?

Mr. Weigand: We will be glad to give them the files.

Judge Huxman: Why can't you agree as to what those files show without admitting the conclusions they seem to draw? That is what you want.

Mr. Sanborn: Don Farnum, 4270 East Boston, is one of them.

Mr. Weigand: Here is that file.

(Handed to counsel.)

Mr. Sanborn: Are you familiar with this Farnum file, have you reviewed it?

The Witness: Sir, I have looked at it very briefly. If you would show it to me again, I will try to help you.

Mr. Sanborn: I am afraid I'm getting—may I ask these [fol. 173] four files be furnished to some of the other counsel here, and let me go on and conclude my brief examination, and we will save time that way.

By Mr. Sanborn:

Q. Have you previously been advised by Judge Kline in the District Court of Sedgwick County, Kansas, that your business—and prior to the enactment of this statute, that your business, as conducted by you, after the Court asking you some questions during the course of that lawsuit, did constitute the unauthorized practice of law in the State of Kansas?

Judge Huxman: Wait until you answer that question. Counsel wants to make an objection.

Mr. Weigand: To which the plaintiff objects on the ground of incompetency, doesn't tend to prove or disprove any issue before the Court and is not persuasive in any way, shape or form as to whether or not this act is constitutional.

Mr. Sanborn: I have a case on that point of law, Your Honor.

Judge Huxman: Is that an adjudication that Judge Kline made, or just advice he gave?

[fol. 174] Mr. Sanborn: It was an adjudication and decision.

Judge Huxman: Well, you can ask him whether Judge Kline adjudicated that.

The Witness: Pardon me, Your Honor. The definition of "adjudication", please.

Judge Huxman: He asked you if, in a certain case, if Judge Kline didn't adjudicate that your acts constituted the illegal practice of law. They could introduce the judgment, that would be the best evidence, I suppose; if you know such an adjudication was made, I presume you may answer. Do you know whether Judge Kline so adjudicated?

The Witness: By that alleged, sir.

Judge Huxman: Didn't he, in a case pending, make a judicial adjudication?

The Witness: I don't know the term.

Judge Huxman: Rendered a judgment to that effect.

Mr. McRae: I represented Mr. Skrupa at that time, before Mr. Weigand and Mr. Bell were in the case. This was a case which I filed on behalf of Mr. Skrupa to enjoin [fol. 175] an employment of a man by the name of Gordon Oliver, who was employed by us, who later went to a competitor of ours. Our reason for firing him was the fact that he had absconded with funds. My prayer was for—enjoined him from going into competitive work. This evidence that was offered was only offered on the basis of what this man—what we had trained him and what he had done. Judge Kline, after hearing the facts of the case relevant to this employment, stated that Mr. Skrupa had not come into that court with clean hands, that he, not only as a Judge of the 18th Judicial District, but as president of the Sedgwick County bar, stated that he believed this man was practicing law and that his business was of that nature, and that he was not entitled to this equitable remedy. I took an appeal from that decision, the man was later fired by our competitor. I felt the case was moot, and I did not take it on to the supreme court. That's the full facts of that case, Your Honor.

Judge Huxman: Is that decision by Judge Kline a part of the judgment?

Mr. Sanborn: Yes, sir.

Judge Huxman: Well, introduce the judgment.

[fol. 176] Mr. Sanborn: We are having it marked now, Your Honor.

Judge Huxman: You may introduce it, Judge Kline's judgment; it will speak for whatever it says, and then we will consider the relevancy of it.

Mr. Sanborn: Thank you, Your Honor.

By Mr. Sanborn:

Q. Mr. Skrupa, this was before the 1st day of July, 1961, wasn't it?

A. That's right.

Q. And it was before the effective date of the statute which you are now attacking—

A. Correct.

Mr. Sanborn: Judge, stop me if you have already ruled on this.

By Mr. Sanborn:

Q. What do you do when you call up these creditors, if the creditors just refuse to go along with your proposal for this debtor?

A. Well, sir, my personal experience is that we don't have any creditors that refuse to go along with it.

Q. You don't have any that refuse to go along with it?

A. That's right. Sometimes it takes a bit of persuasion, but usually we can work it out.

[fol. 177] Judge Huxman: A littled louder.

The Witness: Sometimes it takes a little persuasion, some talk back and forth between us and the creditors, but usually we can work it out.

By Mr. Sanborn:

Q. You negotiate for your client, then, with the creditor until you get it worked out?

A. Yes, sir.

Q. What use do you make of the power of attorney which is in evidence as Defendants' Exhibit F?

A. Sir, when that was in use, and it no longer is, we never made any use of it.

Q. Mr. Skrupa, I want to be perfectly clear about your testimony. Did you intend to testify that substantially all of the creditors go along with your proposals?

A. Yes, sir. After all, if they didn't, we wouldn't be in business.

Q. And do you have in mind that you testified in a previous hearing before Judge Hill as to the subject matter of people not going along with your credit—creditors not going along with your plan?

A. Are you referring to the testimony—

Q. In this transcript you offered.

A. I don't recall, sir, I'm sorry; you would have to point [fol. 178] it out to me. I'm not sure what you are talking about.

Q. Well, what do you do when they won't go along with the plan?

A. Sir, we don't do anything. This doesn't happen. Through experience, we know what creditors will do and what they will not do. And, if they should refuse for some reason, which wouldn't happen in one case out of a thousand, to take the payments from us, we merely tell the debtor to make some arrangements on his own, to go over there and try to straighten it out.

Q. And what do you do with the money that has been turned over to you by the creditor which you have now and—pardon me, the debtor, and have unsuccessfully offered to the creditors?

A. You are saying "creditors", sir. A moment ago it was "creditor".

Q. I'm not trying to mislead you. I want to know, in a situation where the creditor doesn't go along, what you now, at this point, do with the money that you have collected from the person who is in debt.

A. We disburse it to the other creditors, and then we would probably reduce his payment to take into account that this other creditor didn't go along with it. Under- [fol. 179] stand, this is a very rare thing when this hap-

pens, and I am not alleging that this is common practice of ours.

Q. Well, suppose—does it happen that you have these people that are your clients and the creditors don't agree to your terms, and they file suit against them and issue garnishments?

A. It's happened they have been garnisheed, yes, sir.

Q. What do you do in that event?

A. We try to work it out.

Q. Well, how do you go about working it out, after the—the creditor has garnisheed the defendant? How do you go about working it out?

Judge Huxman: Mr. Attorney, I fail to see any relevancy to that question. If my associates agree, you can have an answer.

By Mr. Sanborn:

Q. With whom do you attempt to work it out?

A. The creditors, sir.

Q. You don't lend money to these people, do you?

A. We do not lend money, sir. We occasionally have advanced them money, but under no circumstances is it a loan with interest being drawn. By that I mean, if we have a payment to meet and the man gives us $30 and his car pay- [fol. 180] ment is $31.27, we may advance him this $1.27.

Q. Well, since you loan him no money, what is the occasion for—what are you getting at in your ad about that he needs no co-signers?

A. Sir, we don't want to be confused with a loan company. That is why that is in the ad. Our ad also states we are not a loan company. Maybe that one doesn't, but most of them do.

Q. And what do you mean the person to gather from your statement in your ad, "No security"?

A. Sir, I think that speaks for itself, "No security", no security.

Q. You are familiar with the commercial word, aren't you, Mr. Skrupa?

A. To some degree.

Q. And you are familiar—

Mr. Weigand: May I call the Court's attention to the fact, and I think Mr. Sanborn will have to agree with me, that he asked these same questions and got these same answers in the transcript, and we were only to amplify it and not duplicate it. Isn't that correct, Mr. Sanborn?

Mr. Sanborn: I didn't recall it, as such, or I wouldn't have repeated anything. If counsel recalls it, Your Honor, [fol. 181] certainly, I have no reason to believe that his memory is faulty and I won't ask anything further along that line.

Judge Huxman: Are you offering this exhibit in evidence?

Mr. Sanborn: Yes, sir, after I have the witness identify it and offer it to adverse counsel.

By Mr. Sanborn:

Q. I hand you what has been marked by the Clerk for identification as Defendants' Exhibit I, consisting of two pieces of paper. Do you recognize those as being your business forms?

A. Yes, sir.

Q. What is the smaller thing in the form of a receipt? Is that one of your regular—

A. That is a receipt, yes, sir.

Q. And do you keep duplicate receipts in your record keeping?

A. Yes, we do.

Q. Do you recognize—is this a plan on Exhibit I, or what is this called, these figures of yours? Is that a work sheet?

A. No, sir, I have no idea what this is or who wrote it. It is on our form, but I wouldn't say who wrote it; I don't know.

Q. Well, do you make lists of the indebtedness?

[fol. 182] A. Yes, sir, but not on this kind of sheet. We have a specific form for that.

Q. You do have a certain method of figuring it out, don't you?

A. Certainly, certainly.

Q. And would you look at these figures under Listed

Indebtedness and the statement of charges, and would you state whether or not—

A. Sir—

Q. Please let me ask the question. Would you state whether or not this is a work sheet, the way you fill them out?

A. No, sir, it is not a work sheet.

Q. How do you arrive at your charges, then?

A. Our charges are arrived at on a basis of what we feel—what effort we are going to put in the case.

Q. That would be the difficulty of the case—

A. Yes. We can't, obviously, get it down to a dollar or a dollar-and-cents thing. We try to give it a rough estimate and charge accordingly.

Mr. Weigand: If the Court please, the plaintiff fails to see the relevancy of the amount of the plaintiff's charges to the validity of this law. If he charges one penny consideration for the distribution of money, he violates this [fol. 183] law, and, whether he charges one penny or $10,000, it is still a violation of the law, and this is not up for consideration with respect to the reasonableness of a limitation on charges imposed by the legislature, which would have been a valid enactment by the legislature. They prohibited any consideration, so the adequacy or excessiveness of the consideration, I submit, is not properly before Your Honors in a determination of the constitutionality of this act.

Judge Huxman: Well, the exhibit hasn't been offered in evidence. A lot of questions have been asked about it.

Do you offer this in evidence?

Mr. Sanborn: I was trying to lay a foundation.

Judge Huxman: I think the witness has answered, it is not on his form. He has answered what it is. Now, if you are offering it in evidence, we are interested in it, so we can rule on the objection.

By Mr. Sanborn:

Q. Well, you recognize—this is one of your official receipts?

A. This receipt is, as far as I know, one of our receipts,

yes. This here is our letterhead, but this is not the form [fol. 184] on which we take down the person's indebtedness and his financial obligations. This is merely a sheet of paper with a lot of numbers on it. I don't know what that is.

Judge Huxman: I think that is clearly answered.

By Mr. Sanborn:

Q. Would you please refer to Exhibit K, then, which is the same file, is it not, as this receipt?

A. Yes. This is a gentleman by the name of Nickerson, right? Now, what can I tell you?

Q. Does this, by reference to his file and the receipt given to Mr. Nickerson in the course of your business—he would have the receipt, wouldn't he?—does that indicate to you that they are part of the same transaction?

A. I would say that this is a list that, possibly, he made before we took down a list, or something of the sort, yes, sir. He may have been sitting there waiting to talk to someone and just made this list himself; I don't know, but the two do match here, yes.

Q. Then, being familiar with the operation, having set up the operation of your business, are you able to tell us whether or not Exhibit I constitutes a part of the file of [fol. 185] Mr. Nickerson which is designated for identification as Exhibit K?

A. Did this come out of the file?

Q. I am not permitted to testify. You give the customer the receipt, don't you?

A. Certainly, the receipt is his. That still doesn't prove what this thing is.

Q. I was trying to get you to state whether this data on this matches what you have in your file.

A. This is much more important than this (indicating), as far as we are concerned.

Judge Huxman: Mr. Witness, does it match?

The Witness: Yes, sir, it does match.

Judge Huxman: All right, that answers the question, then.

By Mr. Sanborn:

Q. Thank you. What--does that "Chg" mean charge?

A. I couldn't tell you, but I can tell what the charge was made.

Q. Was the charge—

Mr. Weigand: Now we are coming to the relevancy of my objections, is the amount of the charges relevant to the [fol. 186] determination of the constitutionality of this act?

Judge Hill: It is admitted that they do charge a fee.

Mr. Weigand: Yes, they do.

Judge Hill: The amount, I think, is immaterial.

Judge Huxman: Mr. Attorney, do you offer that in evidence, that exhibit?

Mr. Sanborn: I would like to.

Judge Huxman: Well, you have that privilege.

Judge Hill: For what purpose?

Mr. Sanborn: What I was trying to establish is that this is a part of this transaction, and I want to ask some questions about his business card and what happened to the money—

Judge Huxman: You have an exhibit there. We ought to fix that exhibit. Either offer it in evidence or not, so the Court can rule on it.

Mr. Sanborn: I will offer in evidence Exhibit I.

Judge Hill: For what purpose?

Mr. Sanborn: Well, I believe it has been identified by the witness as a part of this transaction, in this File K, [fol. 187] which is Raymond Nickerson's file, and there is one notation on there, what I am trying to get around to, so I can ask him what this particular—if you see the addition on it at the end of their charges, there is a six-two-o-two added, and we want him to tell us, and "Pd" over at the left—

Judge Huxman: Now, the witness has several times testified that he knows nothing about that sheet of that exhibit.

Do I understand you correctly?

The Witness: That's right, sir.

Judge Huxman: And he has testified repeatedly he doesn't know anything about that.

Mr. Sanborn: I thought he might be familiar with the notations used.

Judge Huxman: Ask him whether he is familiar with the notation on it. It seems to me—

Mr. Coulson: Withdraw the offer.

Mr. Sanborn: May I just withdraw that and go on to his file?

Judge Huxman: Certainly.

By Mr. Sanborn:

Q. Now I am referring to Exhibit K, the file you brought to court today, called the Raymond Nickerson file.

[fol. 188] A. Yes.

Q. Now, in the file there is a card?

A. Right.

Q. With his wife's name on it. What does it show on 12-8? Does it show you received $70 from him?

A. The card shows we received $70, according to the way we keep books, yes, sir.

Q. And that was on December 8?

A. Right.

Q. That was the same as the receipt?

A. Right. Well—

Judge Huxman: Now, you withdraw that—this is K. That doesn't have reference to K, does it?

Mr. Sanborn: He testified that they have duplicate receipts, Your Honor, and I withdrew that, and I assume he would have his duplicate receipt. Maybe it is just a redundant question.

Judge Huxman: Having withdrawn that, I don't think you ought to try to connect this with that. I was wondering if that is what you are—

Mr. Sanborn: I was trying to connect the date of it, and was thinking they had duplicate receipts—I don't [fol. 189] want to get in the position of arguing with the Court, Your Honor, because I don't think it is lawyer-like.

Judge Huxman: I am trying to find out what you are trying to do, sir, that's all.

Mr. Sanborn: I am trying to demonstrate to the Court, by this witness's testimony, what he knows about the files

of his business here, and the method that they used, and that is the purpose of this examination, as to what they do with the money.

Judge Huxman: Well, ask him.

By Mr. Sanborn:

Q. We have established you received $70 from Mr. Nickerson?

A. That's right.

Q. And what happened to Mr. Nickerson's case as reflected by your notation on your file card?

A. Mr. Nickerson later took bankruptcy.

Q. What happened to the $70?

A. Sixty-two dollars two cents of it was paid to the Commercial Credit Corporation on December 8, 1960.

Judge Stanley: Excuse me, was Commercial Credit Corporation one of the creditors listed there?

The Witness: Yes, sir.

[fol. 190] By Mr. Sanborn:

Q. Now, what happened to the rest of the money?

A. Seven dollars ninety-eight cents went towards our fee.

Judge Huxman: Went towards your fee?

The Witness: Yes, sir.

Mr. Weigand: Now, Your Honor, the purpose of all this is for them to demonstrate the amount of the charges which, we submit, is not a proper matter of inquiry. We've gotten one in there; if the Court wants them, we will stipulate to the other three.

Judge Hill: Why don't you stipulate to them?

Mr. Weigand: But I would like to reserve my objection.

Judge Hill: You may.

Mr. Weigand: We will stipulate the amount of those charges on each of those, as shown by those files.

Mr. Coulson: Can you tell us what happened to the money? I don't find any record in there about what happened to the money. Do you know anything about those?

[fol. 191] Mr. Weigand: The money was distributed, as shown in there, to respective creditors that were specified by the debtor, and the amount remaining between that and the amount received was their fee.

Judge Stanley: Mr. Weigand, I assume you are familiar with these files.

Mr. Weigand: I am not, Your Honor. I didn't see them until this morning. Mr. Bell—

Judge Stanley: Mr. Bell, can you stipulate as to the amount received, the amount paid to the creditors and the amount that was charged?

Mr. Bell: Your Honor, we should first note for the record that the amount received by Credit Advisors as their charge was received by them to be applied on the total charge which was contracted for by them, and I will be glad to go through each of these files, reserving our objection to the relevancy of it, and state for the record exactly what was the situation on each of them.

Judge Stanley: It will save a lot of time on each of those.

[fol. 192] Mr. Bell: In the case of Raymond Nickerson, according to the files of Credit Advisors, Mr. Nickerson owed some $1972, for which he—and for Credit Advisors' services in disbursing money to the creditors which he specified, Credit Advisors was to receive a total sum of $165. Mr. Nickerson made a payment to Credit Advisors on December 8 of $70, sixty-two-o-two of which was distributed to Commercial Credit Corporation, one of the specified creditors of Mr. Nickerson, and $7.98 was retained by Credit Advisors to apply on their total fee.

Judge Huxman: Take the next case.

Mr. Coulson: Let's finish this one. How long was the plan in operation?

Mr. Bell: We will stipulate that Mr. Nickerson made no further payments and that he later took bankruptcy.

Mr. Coulson: How much later?

Mr. Bell: December 27, 1960.

Mr. Coulson: Now let's do the same as to these others.

Mr. Bell: In regard to—

Judge Huxman: Are we ready for the next case?

[fol. 193] Mr. Coulson: Yes, Your Honor, he has it.

Judge Huxman: All right, take it up and stipulate as to that.

Mr. Bell: With regard to Oliver Phillips, Credit Advisors entered into a contract with him on January 14, 1961, his total indebtedness, or total of the indebtedness to the creditors which Mr. Oliver Phillips wished Credit Advisors to distribute money to, was $3153. In consideration of the services of Credit Advisors, in distributing that money according to a plan, they were to receive a total fee of $275. Mr. Oliver—Mr. Phillips, under that plan, made a payment on February 7 of $50, March 11 of $15, March 21 of $25, April 12 of $75, May 16 of $50, June 17 of $60. The payment of June 16—June 17, which I mentioned, was a check in the amount of $60 drawn on the Valley State Bank of Belle Plaine, Kansas, payable to Credit Advisors; that, immediately after receiving this check, Credit Advisors paid out money on the basis of it to creditors, and a few days later received the check back from the bank "Payment Stopped". To apply on Credit Advisors' fee, [fol. 194] Credit Advisors, on February 7, I believe, took seven dollars, either seven or nine dollars, it looks like seven. On March 11 took two dollars, on March 21 took five dollars, on April 12 took seven dollars, on May 16, nine dollars, on June 17, seven dollars, and then they received no reimbursement of the $60 which had been credited, because of the insufficient fund check.

Mr. Coulson: When did he go into bankruptcy?

Mr. Bell: He went into bankruptcy on June 22, 1961, some six months after the initiation of the plan, and I might add that the plan required, according to the contract with Credit Advisors, the payment of the sum of $75 per month, which Mr. Phillips did not comply with.

Mr. Coulson: Let's have the next one.

Mr. Bell: Donna and Don F-a-r-n-u-m. On May 18, 1961, Credit Advisors entered into a contract with Mr. and Mrs. Farnum, listing a total—listing total debts to specified creditors of $2200, for which they agreed to pay Credit Advisors a maximum fee of $150, to be taken out of payments made, payments to be made at the rate of $28 per [fol. 195] week. That on May 20 these people made a credit —payment to Credit Advisors of $21 per week, that Credit

Advisors disbursed $19 of that to creditors specified and retained two dollars of that amount to apply on their fee.

Mr. Coulson: Did he go into bankruptcy, too?

Mr. Bell: No. According to our records, this person was garnisheed by an attorney at law, and she then—he or she went to the county attorney for help, and the county attorney then was to take over the handling of the matter.

Mr. Coulson: All right.

Mr. Bell: Jesse Epperson entered into a contract with Credit Advisors on April 24, 1961. The total indebtedness listed of $500, for which they were to pay Credit Advisors a total fee of $50, to be deducted from payments. They were to pay $20 every two weeks on their indebtedness. The file reflects that payment of $20 was made on April 29, May 15, May 29, June 15, July 10, July 27, that $50 of those payments was paid to Don Clark, attorney, who is one of the intervenors in this action, I believe, that he ac-
[fol. 196] cepted those, that $40 of the total amount paid was paid to B. W. Acceptance Company and that $30 was retained by Credit Advisors to be applied on the total fee.

Mr. Coulson: What happened to that plan, is it still in operation?

Mr. Bell: The last payment on that was made on July 27, and we have no further records indicating that anything has happened to it.

Judge Huxman: Is it agreed that these facts related by Mr. Bell, by all counsel, that they are the stipulated facts in these cases?

Mr. Weigand: Yes, Your Honor, subject to our objection as to their relevancy and materiality.

Judge Huxman: So stipulated.

Is there anything else of this witness, now?

Mr. Sanborn: We would like to inquire whether counsel has been able to ascertain from the records of Mr. Skrupa how many of these plans failed within 60 days.

Mr. Bell: No. In order to do that, we would have to go through each and every case since they have been in
[fol. 197] Wichita, and I believe there's 855 that have been signed since they have been in Wichita, and we have not attempted to go through each of those files to ascertain. I

believe the request that you made of us was made a day before yesterday.

Judge Huxman: Is there anything else of this witness?

Mr. Coulson: Does the witness know what percentage o. anything about it?

Judge Huxman: Does the witness know what percentage of these 855 plans failed?

Can you anwser that?

The Witness: Your Honor, it depends upon the interpretation you put on the word "failed". Many of these people that come to us do not complete these plans. In fact, a very small percentage go all the way through with this. There is no good reason why they should go all the way through with it. Where they find themselves in a position where they no longer need our services, they quit, and that's fine by us; if we have done them some service, we are happy and they are happy. And we have dozens, or, in fact, hundreds of clients that have done this and would be glad to give us a recommendation.

[fol. 198] Mr. Coulson: We are trying to find out what percentage failed within the first 60 days.

The Witness: Sir, I don't know, very honestly, because I would be speaking about Wichita and I don't know what that is, sir.

Judge Huxman: That answers the question. The witness can't answer that.

Anything else?

Mr. Sanborn: I would like to offer in evidence Exhibit H.

Judge Huxman: What is that?

Mr. Sanborn: That is Judge Kline's memorandum opinion in that case.

Judge Huxman: I thought we received that in evidence, didn't we?

Judge Stanley: I thought we had.

Judge Huxman: If it hasn't been received, let it be offered. Are there any objections to its receipt?

Mr. Weigand: Yes, Your Honor. This is not, as I understand it, the journal entry of judgment entered by the Court. It is merely what purports to be a transcript of a statement which the Court made from the bench.

[fol. 199] Judge Huxman: Is the authenticity or correctness of the transcript challenged?

Mr. Weigand: I couldn't challenge it. I wasn't there. The counsel who was there, Mr. McRae, has made a statement to the Court as to what has transpired in that case.

Judge Huxman: It is not a certified transcript?

Mr. Weigand: Not a certified transcript, and, Your Honor—if Your Honor please, either a Justice of the Peace or a District Court of Kansas decision in an injunction case, with respect to the doctrine of unclean hands, regardless of what did it, we submit, is not relevant or material to any determination of the constitutionality of this statute.

Judge Huxman: Is that to your best knowledge?

Mr. McRae: I think that is what the Court said, Your Honor.

Judge Huxman: You think that is what the Court said. Then do you still object to it on the ground that it is irrelevant and immaterial?

Mr. Weigand: Yes, Your Honor, and there is no basis [fol. 200] for the consideration of this Court as to a determination of the validity or the constitutionality of this statute.

Judge Huxman: The Court will receive it for whatever value it may have. That will be determined.

(Defendants' Exhibit H, having been marked for identification, was offered and received in evidence.)

Judge Huxman: Is there anything else?

By Mr. Sanborn:

Q. Would you please state, what was the purpose of having the person put on their form, the one being referred to is the financial statement, which is called in the record D, Defendants' Exhibit D, that this is a complete list of all of their creditors and that they are not insolvent or bankrupt?

A. Well, it is because we want a complete list of what their obligations are. We cannot assume that we know what we can do for them unless we know what their complete financial problem is. That is only to clarify—because we mail these things out.

Q. What is the purpose of this certification by them that they are not insolvent or bankrupt?

[fol. 201] Judge Huxman: That they are what?

Mr. Sanborn: Not insolvent or bankrupt.

A. Well, I can't actually answer your question, sir. We have used that form for so long, I would have no answer for it.

By Mr. Sanborn:

Q. Did you make up these forms?
A. Sir, part of these forms are the same forms that were used by a partner of mine, and they have been in use for quite a number of years. They have been changed through the years, to some degree, but some of the material on them just stayed on them.
Q. You did that?
A. I did what, sir?
Q. You have made the changes in them from time to time?
A. Yes, sir, I have.

Mr. Sanborn: We have no further questions, Your Honor.
Judge Huxman: Are there any further questions of this witness?

Redirect examination.

By Mr. Bell:

Q. I would just like to ask the witness, did you or your attorney change these forms, Mr. Skrupa?

Judge Huxman: I didn't get the question.
[fol. 202] Mr. Sanborn: That is objected to as leading.

By Mr. Bell:

Q. Did you or your attorney change these forms at any time when it was necessary to do so?
A. On the advice of counsel, they have been changed, yes.

Mr. Bell: That is all I have.
Judge Huxman: Is there anything else?
The witness is excused. You may step down.

(Witness excused.)

[fol. 203]

COLLOQUY BETWEEN COURT AND COUNSEL

Judge Huxman: Is there anything else to be offered, or is this it?

Mr. Weigand: That is all the evidence the plaintiff offers, Your Honor, except I have forgotten one thing. We have for identification here, under the heading "Memorandum Brief", it is really an actual copy of the Oklahoma Statutes Annotated, Title 24, Chapter 1, Section 15, which we think is evidence, Your Honor, with respect to one issue which they have raised, if it is material. I might say this in connection with the exhibit, when the Clerk finished marking it, I don't know whether this Court, being a court of the United States, can take judicial knowledge of the Oklahoma law. If it can, I don't have to offer—

Mr. Coulson: I will agree that they can, that they can take judicial notice of the law of all states.

Judge Huxman: I hope you are not asking us to pass on an Oklahoma statute, too.

Mr. Weigand: No, Judge. I wanted to call to the Court's attention, in the form of evidence, that the Oklahoma statute uses the same definition of debt pooling, they all put a different label on the deal, but they call the act the same, [fol. 204] and then, instead of calling it "the practice of law", they forbid lawyers to do it and let nobody but retail credit organizations do it.

Judge Huxman: Do you offer this exhibit?

Mr. Weigand: We offer this exhibit on the question of whether or not debt pooling is defined in the act as the practice of law—

Judge Huxman: Any objection?

Mr. Coulson: I object to introduction of the exhibit, but I agree that Your Honors can take judicial notice of the laws of all states.

Judge Huxman: We are supposed to take judicial knowledge of it, but I believe it will help us to know what the law is, if we have a copy of it, so it will be received for whatever it may be worth.

Mr. Weigand: That concludes our evidence.

Judge Huxman: That concludes the evidence of all the parties?

Mr. Henson: Your Honor, for the purposes of our motion to dismiss, we ask the Court to judicially notice the [fol. 205] Statutes of Kansas, the powers of the attorney general and the county attorney.

Judge Huxman: Does the defendant have anything—I thought the defendant said they rested, had nothing further to present, no further evidence. That is what I understood.

Mr. Weigand: We have segregated, as to legal propositions, five briefs which we are in a position to submit—

Judge Huxman: Mr. Weigand, I think the Court is in agreement that we may have an inkling of the issues as presented by the parties, and it is a difficult question, it is not easy, and I doubt whether you would care to make oral argument at this time. I think I speak for my two associates when I say that it would be more helpful to us if, after this hearing, the parties would submit written briefs in support of your various contentions.

Mr. Weigand: We are in a position to submit in triplicate, now, our initial brief, and then, if Your Honors are going to give them additional time, we would like to have five days to file a reply when we get their briefs. We will submit copies.

[fol. 206] Judge Huxman: Are you ready to submit your brief at this time in triplicate, in support of your position?

Mr. Weigand: Yes, Your Honor.

Judge Huxman: How long does the defendant want? And I suppose—will the defendant and amicus curiae work together in your brief, or are you going to file separate briefs?

Mr. Coulson: I think we will have to file separate briefs, Your Honor, because the one issue, the state court issue or the diversity issue, about the validity of the State of Kansas, is a problem we feel the bar association has no concern with.

Judge Huxman: And how long does the defendant county attorney want to submit a reply brief?

Mr. Coulson: I would like to know how long Mr. Weigand's brief is that we are going to have to reply to.

Mr. Weigand: As I say, we have five briefs, one segregated as to each proposition of law, so, if the Court don't like to consider one proposition, they won't have to read it all. We have divided it into the matters. We think that [fol. 207] this matter of the illegal practice of the law, for example, Your Honor, is one where they can't raise it, because it isn't in the title, and that act couldn't be—

Judge Huxman: Mr. Weigand, do you have a complete brief ready to file on your position?

Mr. Weigand: Yes, Your Honor.

Mr. Coulson: What I am trying to find out is how big is it, how many pages, in toto?

Judge Huxman: First, let me ask the defendant, the county attorney, how long do you want for your brief, if you are furnished a copy of the plaintiff's brief, now?

Mr. Sanborn: I'd like to have about 20 days, Your Honor, not because it will take that long to do the work, but because I am not going to be back in the office for a while.

Judge Huxman: Going on vacation?

Mr. Sanborn: Well, a few days.

Judge Huxman: The defendant, the county attorney, will be given 20 days from today to file a brief. That is on the assumption that you will be served with a copy of plaintiff's [fol. 208] brief at this time.

Mr. Sanborn: Your Honor, we raised something in this case in our answer. They posted a bond. It was supposed to secure the State of Kansas any costs occasioned by this, if the state should prevail, and I haven't briefed the law on it, but I did set out that we have undergone expense, and will, and I would like leave, after a brief of the law, if I think Your Honor should rule on that, to just submit what the expenses were; that will be in the nature of evidence, actually.

Judge Huxman: Well, I supposed that would come up when you asserted a claim against them on your bond.

Judge Hill: I think that will be after a decision in the case.

Judge Huxman: That wouldn't be raised until we reach a decision. If we rule for the plaintiffs, then they are not liable on t ie bond.

Mr. Sanborn: I realize that.

Judge Huxman: If we rule for you, then you can assert on that bond such items as are appropriate.

[fol. 209] Mr. Sanborn: Yes, sir. I didn't think you would want to come back together for—

Judge Hill: We can consider that matter.

Judge Huxman: In any event, we can't reach that now.

Now, how long does the attorney general want on its brief?

Mr. Henson: Your Honor, we feel we can have a brief on file within seven days on our motion to dismiss.

Judge Huxman: Take ten days from today. You mean from today, seven days?

Mr. Henson: From today.

Judge Huxman: The attorney general is given ten days from this date to file a brief in support of his position.

Now, Mr. Coulson, how long do you want for amicus curiae?

Mr. Coulson: I will need, certainly, no more than 20 days allowed—

Judge Huxman: Twenty days is sufficient for you, sir?

Mr. Coulson: Twenty. I say I'll take no more than that.

[fol. 210] Once I can find out how big this thing is, I'll have a better idea.

Judge Huxman: Knowing you as I do, Mr. Coulson, I think you can answer any brief they could serve on you within 20 days.

Mr. Coulson: I'll file something, Your Honor. Your Honor will determine whether it is an answer.

Judge Huxman: If you find you can't, if you will ask the Court, we might give you 21, or such a matter.

Now, the plaintiff may have ten days, or which will be 30 days from this date, to file a reply brief, ten days after the defendant's and amicus curiae brief are served on plaintiff, to file a reply brief, if desired.

Judge Stanley: Mr. Weigand, you can include your answer to the attorney general's brief in your reply brief, can you?

Mr. Weigand: Yes.

Judge Huxman: So you will have 30 days from today to reply to the attorney general and to reply to the briefs on behalf of the defendants.

Upon the receipt of these briefs, the case will be submitted [fol. 211] to the Court on its merits for decision.

Is there anything remaining undisposed of that you wish to call the Court's attention to, gentlemen, before we adjourn?

Mr. Coulson: Not from us.

Mr. Weigand: Should I deliver these three copies of the brief to the Clerk?

Judge Huxman: Yes.

Mr. Sanborn: Will we get one of those?

Mr. Weigand: Yes.

Judge Hill: Do you have an original and three copies?

(Colloquy was here had off the record.)

Judge Huxman: If you will file the original and two copies, I, living here, I can take the original and the Clerk will send the two copies to Judge Stanley and Judge Hill.

Is there anything else, now?

Now, the Court does appreciate the efforts of the parties. I want you to know that we haven't been a bit impatient with anybody. Naturally, we have been somewhat confused, [fol. 212] but that is due to our ignorance of the issues. We do appreciate the presentation.

Upon receipt of these briefs, the problem becomes ours.

If nothing further, please announce the Court is in recess, subject to call.

(Thereupon, at the hour of 4:00 o'clock p. m., the Court stood at recess subject to call.)

Reporter's Certificate (omitted in printing).

[fol. 213] Clerk's Certificate (omitted in printing).

[fol. 213a]

PLAINTIFF'S EXHIBIT 1

MEMORANDUM BRIEF

OKLAHOMA STATUTES ANNOTATED, Title 24, Chapter 1, Section 15, reads as follows:

"Title of Act: An Act relating to debt pooling; prohibiting any person, firm, company or corporation from engaging in or operating a debt pooling business; making violation of Act a misdemeanor and fixing the penalty therefor; defining term debt pooling as used herein; and declaring an emergency. Laws 1957, p. 161 hgrein; and declaring an emergency. Laws 1957, p. 161."

"§ 15. *Debt pooling—Prohibition*

"No person, firm, company or corporation shall engage in or operate a business known as debt pooling. Laws 1957, p. 161, §1. . . ."

Section 16 reads as follows:

"§ 16. *Debt pooling—Definition*

"Debt Pooling is defined as making a contract with a particular debtor whereby the debtor agrees to pay a sum or sums of money periodically to the person engaged in the debt pooling who shall distribute the same among certain specified creditors in accordance with a plan agreed upon and the debtor further agrees to pay such person any valuable consideration for such services or for any other services rendered in connection therewith. Laws 1957, p. 161, § 2.

"§ 17. *Debt Pooling—Penalties*

"Any person, firm, company or corporation violating any of the provisions of this Act shall be guilty of a misdemeanor and upon conviction thereof shall be fined not less than One Hundred Dollars ($100.00) nor more than Five Hundred Dollars ($500.00), or by im-

prisonment in the county jail for not more than thirty (30) days, or by both such fine and imprisonment. Laws 1957, p. 161, § 3.

"§ 18. *Debt pooling—Application of Act*

"The provisions of this Act shall not apply to any retail merchants' trade association or a nonprofit association formed for the purpose of collecting accounts and exchanging credit information. Laws 1957, p. 161, § 4."

[fol. 213b]

DEFENDANT'S EXHIBIT A

(Letterhead of Credit Advisors, Wichita, Kansas)

Gentlemen:

We are in Wichita to offer financial budgeting and management service to those who feel the need for such assistance.

Credit Advisors does not function as a lending or collection agency. What we do is to set up a budget for the debtor after having determined, with his assistance, what he reasonably needs for monthly living expenses. The remainder of his income is directed to us to pay his creditors, payments being made in terms of previous arrangements wherever possible.

If the client-debtor is late with his payment to us we contact him by phone and letter urging him to meet his obligations. This relieves some of the burden from your own collection departments. We hasten to add that we do not expect to intervene in any rights you possess to protect your security of financial interest. We function merely as a helping hand. If we are not paying you promptly then you may be sure that the debtor is not paying us and we do not intend to operate as a shield for him without good cause. All we ask is that you contact us with questions concerning payment or other matters so long as you are being paid regularly.

By way of other information on our business we should like to state that our employees are bonded by the Maryland Casualty Company. Funds paid into us are, wherever possible, redistributed the same day by check. We have an office in Omaha and have done business with all of the banks, loan and collection companies as well as most of the merchandise houses. We are also connected by ties of ethics with Credit Advisors of Detroit, Chicago and Gary.

Please feel fee to call us at any time concerning any questions you might have.

Very truly yours,

Credit Advisors
....., Manager

GO/rlm

[fol. 213c]

DEFENDANT'S EXHIBIT B

(Letterhead of Credit Advisors, Wichita, Kansas)

We the undersigned do hereby request that you accept the terms set forth herein by Credit Advisors Company so that we can resolve our financial affairs.

A review of our indebtedness indicates that we may make a distribution to all our creditors by .....
your part being $.....

Your cooperation in participating in this arrangement will be appreciated. This will enable all of our creditors to receive their share of our income monthly until such time as our indebtedness may be refinanced or liquidated.

If this arrangement is unsatisfactory, please contact Credit Advisors.

.....

Address .....

Your Account #.....

.....

(Clip here and return lower section)

Our present balance .....

Our records have been posted .....

CA #..... Confirmed by .....

[fol. 213d]

DEFENDANT'S EXHIBIT C

(Letterhead of Credit Advisors, Wichita, Kansas)

In response to your request for information we will explain as briefly as possible the type of service we offer.

We are not a loan company, but we do have a new and successful plan of consolidating debts into one payment per payday. This method has all the advantages of a consolidation loan but you do not pay high rates of interest nor do you need to mortgage property or have co-signers.

All of your bills are combined so that you have just one place to pay. We then budget your income with you and arrange a payment plan with the people you owe at a payment you can afford. You make only one payment—to this office. We re-budget this money and promptly send it out to your creditors in such a way as to keep them satisfied.

A complete listing of all the creditors, addresses and amounts due must be given us so that we may contact them and inform them that we will be acting as your representative and that they will receive all payments from us and to contact us in the future.

If there are no judgments or repossessions pending we are able to perform this service for as low as:

If You Owe:	You May Pay As Little As:
$1000	$15.00 per week
$2000	$25.00 per week
$3000	$35.00 per week

May we point out some of the advantages of our service if we receive REGULAR payments from you:

1. You have only one payment to make. We pay all creditors by check, thus saving you much time, postage and effort and giving a perfect record of all payments.
2. Your credit improves with regular payments.
3. Regular payments avoid garnishments and wage assignments.
4. Most important—You have peace of mind.

Enclosed is one of our forms for you to fill out if you feel we could be of any help. No obligation is incurred by coming in to see what we can do. Our service is confidential.

REMEMBER: YOU CANNOT BORROW YOUR WAY OUT OF DEBT.

Very truly yours,

CREDIT ADVISORS

CREDIT ADVISORS

APPLICATION DATE _____

NAME _____ WIFE _____ DEPENDENTS _____

ADDRESS _____ HOW LONG _____ TELEPHONE _____

TOWN _____ STATE _____ RENTING _____ BUYING _____

MORTGAGE WITH _____

EMPLOYER _____ HOW LONG _____ PAY PAID _____

OTHER PHONE _____ TAKE HOME PAY _____

ALL OTHER INCOME _____

WHEN CAN YOU MAKE FIRST PAYMENT _____

WHERE IS WIFE EMPLOYED _____ TAKE HOME PAY _____

LIST HERE YOUR MONTHLY EXPENSES. . . . . .BE COMPLETE

RENT OR MORTGAGE PAYMENT _____

FOOD AND GROCERIES _____

HOUSE GAS _____

ELECTRICITY _____

HEAT _____

INSURANCE (APART FROM CAR INSURANCE) _____

CAR FARE TO WORK _____

AUTO EXPENSES (GAS & OIL) _____

TELEPHONE BILL _____

[fol. 2130]

DEFENDANT'S E

RENT OR MORTGAGE PAYMENT _____

FOOD AND GROCERIES _____

HOUSE GAS _____

ELECTRICITY _____

HEAT _____

INSURANCE (APART FROM CAR INSURANCE) _____

CAR FARE TO WORK _____

AUTO EXPENSES (GAS & OIL) _____

TELEPHONE BILL _____

MISCELLANEOUS _____

TOTAL MONTHLY EXPENSES _____

_____ DO NOT WRITE BELOW THIS LINE _____

TOTAL INCOME _____

TOTAL EXPENSES _____

AVAILABILITY _____

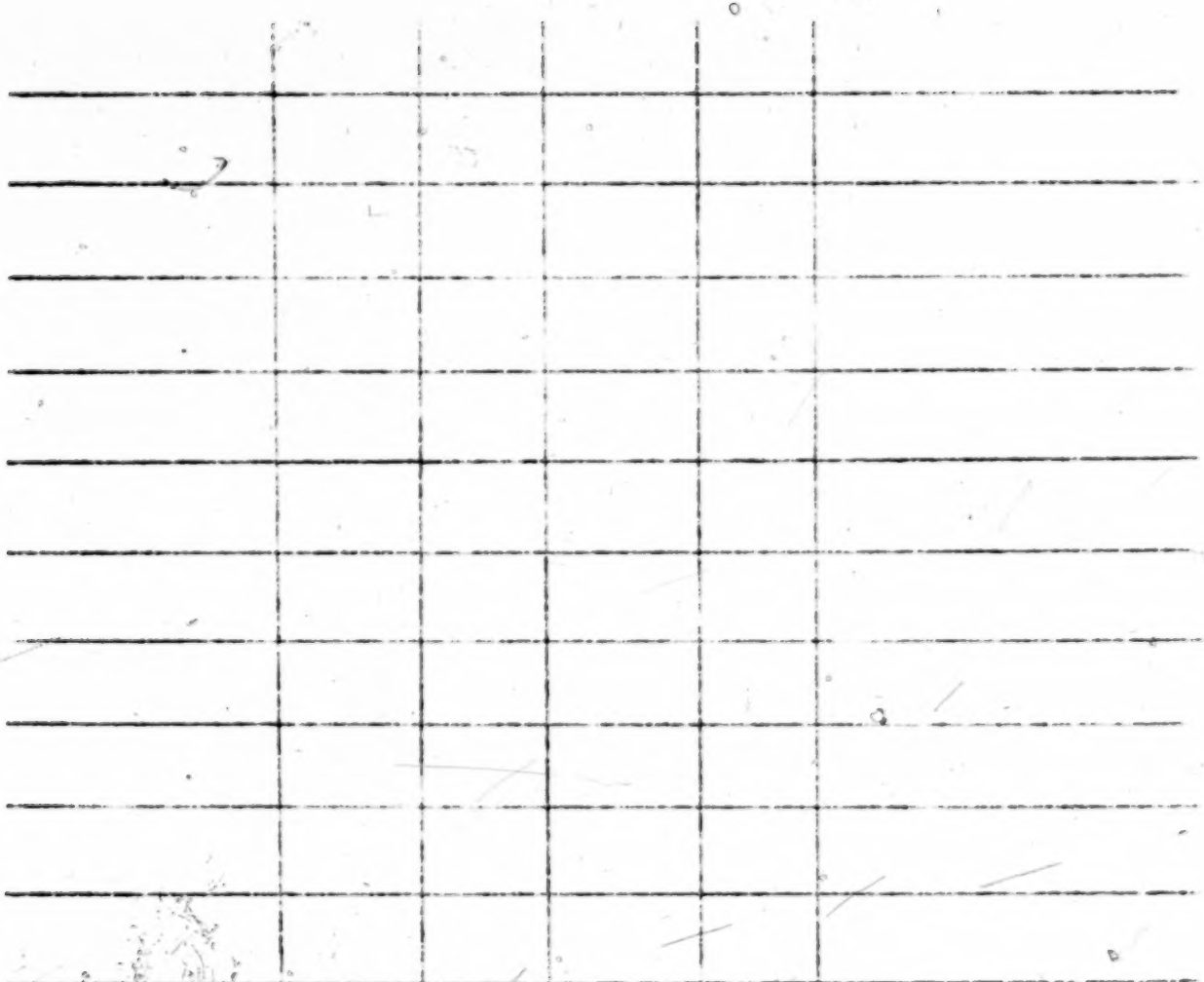
[fol. 2136]

DEFENDANT'S EXHIBIT D

FINANCIAL STATEMENT

NOTE: LIST ALL OUTSTANDING BILLS.
THIS OFFICE CANNOT BE RESPONSIBLE FOR ANY OMISSIONS.

CREDITORS	TOTAL OWED	MONTHLY PAYMENT	ACCOUNT NUMBER	LAST PAID	ADDRESS



THIS IS A COMPLETE LIST OF MY CREDITORS AND I (A.) DO NOT OWE
OTHER DEBTS OR JUDGMENTS, NOR AM I (B.) INSOLVENT OR BANKRUPT.

120 [fol. 213ec]

[fol. 213f]

Defendant's Exhibit E

Credit Advisors

Date .....

Agreement:

I (we) hereby employ the Credit Advisors to act as my (our) agent in arranging and making monthly payments to my (our) creditors who are listed in my application. I (we) hereby agree to cooperate with Credit Advisors Company in every respect, in the payment of these obligations, and to furnish the Credit Advisors Company with a complete and accurate list of all my (our) creditors, with addresses and amounts owing each creditor, together with the original and present status of each account.

I (we) hereby agree to pay to the Credit Advisors Company the sum of $..... per week (month) on ..... until the sum of $..... which is the total principal amount of my present indebtedness including the charges of the Credit Advisors has been paid. Any amount paid as interest to finance companies or others will be in addition to the above amount stated as total indebtedness.

I (we) hereby agree to pay to the Credit Advisors Company the sum of $..... as compensation for their services in acting as my (our) agent herein mentioned above. This contract is for one year, renewable at the option of the debtor.

In the event that I (we) default in my (our) payments, the Credit Advisors can at any time declare this contract terminated. Should this contract be terminated by me (us) at any time or the Credit Advisors, I (we) hereby agree to pay the Credit Advisors the amount of $25.00. This amount shall become due and payable to the Credit Advisors at their option, upon the notice of cancellation being sent to me at my last known address.

It is distinctly understood by me (us) that the services to be rendered to me (us) by the Credit Advisors is for

the purpose of enabling me (us) to pay off our creditors and that I (we) further understand that the Credit Advisors does not render any legal opinions or give any legal advice nor act as my (our) attorney in any manner or capacity whatsoever.

Signed in the presence of: Name .....

.....

Credit Advisors

Contract—Note Number .....

[fol. 213g]

DEFENDANT'S EXHIBIT F

POWER OF ATTORNEY

I, ..., of ....., ... County, ..., do hereby appoint, make and constitute the Credit Advisors, of ....., ..., and its duly designated and appointed officers and employees, my true and lawful attorney in fact and to act for and on my behalf in the following manner:

1.

Use so much of the funds as may be found necessary and is agreed upon and set forth in the budget prepared for me by Credit Advisors for the purposes set forth in said budget and contract.

2.

I agree to hold Credit Advisors, its officers and employees harmless for any act performed on my behalf pursuant to this Power of Attorney, and any instrument executed to carry out the intent hereof, and I hereby ratify all and any acts performed on my behalf pursuant hereto.

3.

It is understood and agreed that the appointment of Credit Advisors, its officers and employees my true and lawful attorney in fact in no way relieves me of any obligation to pay or meet any obligations now due or hereafter becoming due or incurred by me, nor does the acceptance of such Power of Attorney by Credit Advisors, bind it or its officers or employees to pay any of my obligations or become security or guarantor or grantor thereof.

.....

.....

Accepted by Credit Advisors, this ..... day of .... 1960.

CREDIT ADVISORS

BY: .....

[fol. 213h]

DEFENDANT'S EXHIBIT G

"Missouri Debt Pooler a Bankrupt"

DeForest Bush who was in the debt pooling business and hence a self-proclaimed expert at paying other people's bills couldn't pay $188,229 worth of his own bills.

A St. Louisan, Mr. Bush is a veteran of the "budget plan" type of debt service. Persons who are badly in debt can arrange for such a debt pooling service to take over in [fol. 213i] dealing with creditors. The debt adjustor arranges for a plan of payment—using the customer's money, of course—and charges him a fee for arranging the peace pact with his creditors.

In a voluntary petition in bankruptcy filed Thursday in Federal Court Mr. Bush said he had liabilities of $188,229.

And he listed assets of $452. Of this, $375, the valuation of his household goods, is exempt from use in meeting claims. So the assets for meeting the bills were given as $27 in the bank and $50 in accounts receivable.

Mr. Bush listed himself as debt adjustor with offices at 315 North Seventh St. and gave his home address as 4407 O'Neill Ave., Normandy. He said he had been in business for 21 years.

In 1959 he lost $24,143 on his operations, the petition said, and in 1960 his profit was $1474. It is noted that in 1955 he was doing business in Missouri, Texas, Georgia, West Virginia, Alabama, Indiana and Washington, D. C.

[fol. 213j]

DEFENDANT'S EXHIBIT H

No. B-6975 10 Feb. 1961.

Frank C. Skrupa vs. Gordon Oliver

THE COURT:

In this case, as I understand it, the defendant was employed by the plaintiff and received training to the extent of a couple of months in Omaha, then was brought to Wichita, wherein a branch office, or another office, was opened by the plaintiff; that for some 8 months or so he worked there as manager of the office in Wichita, and then his employment was terminated. That after he had worked a couple of weeks in Omaha, he entered into a contract marked Plaintiff's Exhibit 1 in this case. He was trained from that of a person having worked in safety up in the position to manage the type of business that the plaintiff maintains in Wichita.

There is no evidence before this Court that the plaintiff has been damaged in any way by the defendant going to work for someone who is in a similar type of business. As a matter of fact, the evidence shows, in my opinion, that the plaintiff has not received any damages. There is no testimony here to show, and as a matter of fact to the contrary, that any of the plaintiff's clients as they refer to them, were taken by the defendant to his new employer. As a matter of fact, as I interpret the testimony he would have no reason, or could not attempt to take them because the agreement was already made between the socalled clients and the plaintiff.

[fol. 213k] I see no trade secrets involved here. I was trying to elicit it from the witnesses this morning wherein he obtained information that would be, by the use of it, would be detrimental to that of the plaintiff.

This is not the type of case of personal contact such as your route man that we have had cases here in Wichita where I have restrained route men from going back into the same area, and not restrained them from working for competitive company in a different area, as long as they did not interfere in the routes where they had been employed.

Injunction is an extraordinary remedy; it is to be brought only on rare occasions wherein the damages are irreparable. In addition to that, I am of the opinion that the plaintiff's business as conducted here in Wichita smacks of unauthorized practice of law, and for these reasons the demurrer to the evidence will be sustained.

**

The court is of the opinion, Mr. Mc Rae that when a person comes into this court asking for equitable relief in the form of an injunction that they must come into this court with clean hands. Therefore, I am of the opinion that this plaintiff's conduct of business in the city of Wichita is bordering on the unlawful practice of law and he is not entitled to come into this community and practice law. That is merely an additional reason, other than the two that [fol. 213 l] I have mentioned. This court is vitally interested, not only as a judge, but as President of this bar association that we not have unauthorized practice of law in the city of Wichita or any place else in the state, and I think that is part of the responsibility of the courts and judges thereof.

***

Eliminating that phase of it and going strictly to the pleadings and the testimony other than that with reference to possibly the unauthorized practice of law as I stated in my first two reasons, there were no trade secrets involved here that have been presented to this court. There was no loss by the plaintiff according to the testimony here, that

the defendant was not such that either his personal contacts with the plaintiff's clients as he referred to them, in a position to take them away from the plaintiff. I see from the evidence before me there has been no damage done to the plaintiff.

**

I don't see any testimony before this court wherein I can see that the plaintiff would ever be injured, from the testimony before this court.

[fol. 214] [File endorsement omitted]

IN THE UNITED STATES DISTRICT COURT

FOR THE DISTRICT OF KANSAS

Civil Action No. W-2434

FRANK C. SKRUPA, d/b/a CREDIT ADVISORS, Plaintiff,

vs.

KEITH SANBORN, County Attorney, for the County of Sedgwick, State of Kansas, and WILLIAM M. FERGUSON, Attorney General for the State of Kansas, Defendants.

FINDINGS OF FACT, CONCLUSIONS OF LAW AND OPINION—
Filed November 27, 1961

This is an action to enjoin the enforcement, operation and execution of a statute of the State of Kansas, known as Senate Bill 366, passed by the 1961 Session of the Kansas Legislature. The grounds on which the action is predicated are that the act is void because it violates and infringes plaintiff's rights guaranteed by the due process clause of the Fourteenth Amendment to the United States Constitution.

The action being one to enjoin the enforcement of a state statute, a Three-Judge Court was convened. The cause came on regularly for hearing at Topeka, Kansas, on the

17th day of August, 1961, plaintiff being present by his attorneys, Lawrence Weigand, Don Bell and Ernest McRae, and the defendants being present by their attorneys, Charles Hanson, Assistant Attorney General; Keith Sanborn, County Attorney, Sedgwick County; William Tomilson, Assistant County Attorney, Sedgwick County; Arty Vaughn, Assistant County Attorney, Sedgwick County; and Wayne Coulson. At the conclusion of the hearing, the case was taken under advisement. Briefs were requested. These have been considered by the court. The court finds these facts.

[fol. 215] Findings of Fact

Plaintiff operates a business known as "Credit Advisors" with offices in Omaha, Nebraska, and Wichita, Kansas. The business consists of debt adjustment. In general, the business may be defined as consisting of making arrangements with persons in financial difficulties, by which, for a fee, plaintiff undertakes to marshal all his client's creditors and his assets and undertakes to effect an agreement by which the debtor shall pay plaintiff a certain percent of his earnings which are then paid, as agreed upon, to his creditors. This sketchy description of plaintiff's business is sufficient to pinpoint the questions presented in this case.

The 1961 Act referred to above deals with debt adjustment. Plaintiff's business falls within the provisions of the act. The act reads, as follows:

> "Section 1. For the purpose of this act, 'debt adjusting' means the making of a contract, express, or implied with a particular debtor whereby the debtor agrees to pay a certain amount of money periodically to the person engaged in the debt adjusting business who shall for a consideration distribute the same among certain specified creditors in accordance with a plan agreed upon. Whoever engages in the business of debt adjusting shall be guilty of a misdemeanor and upon conviction thereof shall be punished by a fine of not more than five hundred dollars ($500), or by imprisonment in the county jail not exceeding six (6) months, or by both such fine and imprisonment: Provided, That the provisions of this act shall not apply to those

[fol. 216] situations involving debt adjusting as herein defined incurred incidentally in the lawful practice of law in this state."

Walter A. Huxman, United States Circuit Judge, Retired; Delmas C. Hill, United States Circuit Judge; Arthur J. Stanley, Jr., Chief Judge, United States District Court.

Conclusions of Law

The court concludes, as a matter of law, that the act in question is prohibitory and not regulatory; but even if construed as regulatory, it is an unreasonable and unwarranted regulation of a lawful business, and, therefore, constitutes a violation of the rights of plaintiff as guaranteed by the due process clause of the Fourteenth Amendment to the Federal Constitution.

Walter A. Huxman, United States Circuit Judge, Retired; Delmas C. Hill, United States Circuit Judge; Arthur J. Stanley, Jr., Chief Judge, United States District Court.

[fol. 217] Opinion

Debt adjustment is a business affected by a public interest and because of its nature is subject to regulation by a state under its police powers. State police powers are broad and comprehensive and it is held, without exception, that federal courts should be loath to interfere with the exercise of such powers. But, on the other hand, we have a clear duty and mandate to protect federal rights guaranteed by the Constitution, and this duty we must not shirk.

The Attorney General has filed a motion to dismiss as to him on the ground that he is not a proper party. There are a number of state cases of a similar nature in which the Attorney General was joined as a party defendant.[1] Apparently the propriety of joining him was not specifically

[1] Gilbert v. W. R. Matthews, Co. Attorney, and John Anderson, Atty. Gen., 352 P. 2d. 58.

challenged. It seems to have been generally accepted that he is a proper party defendant. The Attorney General of Kansas is the general law enforcement officer of the state. He supervises the activities of county attorneys. In proper cases, he may direct them to enforce the laws of the state. The motion to dismiss should be overruled.

The decision turns upon whether the act in question is regulatory or prohibitory, and if regulatory, whether it manifests a reasonable and necessary regulation of a business which, although subject to police power, is nonetheless a lawful business. A right to regulate does not carry with it the right to adopt unreasonable or unfair regulations.[2] Since there is no dispute in the principles of law which must be applied, and since we are here concerned with [fol. 218] the construction of the Kansas statute by application of these principles, no useful purpose would be served by citation and discussion of a number of decisions construing somewhat similar statutes of other states, especially where such statutes differ in material respects from the one under consideration here.

Kansas, in passing the act in question, apparently took it almost verbatim from a similar Pennsylvania statute. The wording of the two acts is almost identical. The Superior Court of Pennsylvania in a well reasoned opinion declared the Pennsylvania act unconstitutional. It held that the Pennsylvania act was not regulatory but prohibitory. It held that prohibiting engagement in a lawful business was an abuse of the police power.[3] We are in full accord with the reasoning and philosophy of the Pennsylvania court.

Debt adjustment by its very nature may lend itself to great abuses and because of this the state has power to regulate it to the end that its citizens may not be overreached by unscrupulous persons. No doubt, the state can, by proper regulations, set up standards and qualifications, and even limit the business to certain classes of qualified

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[2] Gilbert v. W. R. Matthews, Co. Attorney, and John Anderson, Atty. Gen., supra.

[3] See Commonwealth v. Stone, 155 A. 2d. 453

persons. But such regulations must be founded on reason. Whatever the state does must bear a reasonable relation to what the state seeks to do—protect those in financial distress from exploitation by unscrupulous and dishonest operators.

A careful analysis of the act fails to show anything that can be denominated regulatory. After defining debt adjustment, the act states that anyone who "engages in the business of debt adjustment shall be guilty * * *" of an offense and punished as defined in the act.

The only exception is that the "act shall not apply to those situations involving debt adjusting as herein defined [fol. 219] incurred incidentally in the lawful practice of law in this state." This, in our opinion, is not a regulation, or if it is, it is an unreasonable regulation. To say that a lawyer may adjust debts only as an incident to a case which is otherwise before him, is most unreasonable. If a lawyer, engaged in the regular practice of the law, concluded there was a greater field for him in devoting all his time to debt adjustment, rather than to the general practice of law, he could not discontinue his general practice and devote his full time to debt adjustment. He could not do so because he can adjust debts only as an incident to his general law practice. We conclude, first, that the act is prohibitory and not regulatory; and that it prohibits anyone from engaging in the business of debt adjustment. But even if the exception is considered as regulatory, it is an unreasonable regulation of a lawful business. We know of no statute aside from the Pennsylvania statute which has gone that far.

Our attention is called to the case of American Budget Corp. v. Furman, 170 A. 2d 63, in which the New Jersey Superior Court reached a conclusion contrary to that of the Pennsylvania Court and held a somewhat similar act constitutional. No useful purpose would be served by a detailed analysis of the Furman case. It is sufficient to say that it differed in many particulars from the Pennsylvania case and from the act we have before us here. We adopt the reasoning of the Pennsylvania case, Commonwealth v. Stone, supra.

Our attention has also been called to the case of Williamson v. Lee Optical Company, 348 U.S. 483, in which the Supreme Court held constitutional a rather drastic act by the Oklahoma legislature regulating the business of fitting and selling glasses as a valid exercise of the police power. But that act did not outlaw the business of fitting lenses to a face or duplicating or replacing, into frames, lenses [fol. 220] or other optical appliances. The attack on the statute was that it was unlawfully discriminatory in its provisions as to who could engage in such business or the conditions under which the business could be carried on. Under the Kansas statute, no one can engage in debt adjustment as a business. Debt adjustment, though recognized as a lawful business, is declared unlawful.

Judgment will be entered denying the motion of the defendant, Attorney General, to be dismissed from the case. A further judgment will be entered permanently enjoining the enforcement of the act against plaintiff.

Walter A. Huxman, United States Circuit Judge, Retired; Delmas C. Hill, United States Circuit Judge; Arthur J. Stanley, Jr., Chief Judge, United States District Court.

[fol. 221]

IN THE UNITED STATES DISTRICT COURT

FOR THE DISTRICT OF KANSAS

No. W-2434

DISSENTING OPINION

Arthur J. Stanley, Jr., District Judge.

I cannot agree with the conclusion that the questioned statute is unconstitutional.

That debt adjustment is a business affecting the public interest is not questioned. It has been the subject of legislation in many states. (See the summary of state statutes appearing in the opinion in *American Budget Corp.* v. *Furman*, 67 N.J. Super. 134, 170 A.2d 63.) Regulation of the business, therefore, is a proper function of the state in the exercise of its police power. I believe that the Act under attack is an effort on the part of the legislature of

Kansas to impose reasonable and necessary regulations on a business affecting the financial stability of the citizens of Kansas.

The Act provides in effect that debt adjustment as therein defined may be engaged in only by attorneys, and then only when carried on "incidentally in the lawful practice of law." It is true that a lawyer who has abandoned his general practice to devote his full time to debt adjustment [fol. 222] would be in violation of the statute. I feel sure that this is exactly what the legislature intended. An attorney engaged in general practice, when consulted by a client whose financial affairs had become involved, would, quite naturally, explore all avenues open to his client. He would inquire as to the possibility of defenses to the claims, consider the applicability of exemption laws, explain the advantages and disadvantages of bankruptcy, and might or might not suggest the initiation of a debt adjustment scheme. One admitted to the Bar but who had chosen to become a debt adjuster and to limit himself to that one narrow field would be likely to adopt a different approach to the problem. He would not be expected to advise his client to seek relief through another means than that in which he specialized exclusively. (If he did, would he not by so doing bring himself within the proviso so that he would not then be barred by the statute?)

In arriving at a decision as to the necessity or reasonableness of the regulation, it is not essential that the court agree with the methods adopted by the lawmakers, or that it be concerned with the wisdom of the legislation. The scope of the court's inquiry should be limited to whether any state of facts, known or reasonably to be assumed, support the legislative judgment. *American Budget Corp.* v. *Furman, supra; Williamson* v. *Lee Optical Co.*, 348 U.S. 483.

I am more impressed by the reasoning of the Superior Court of New Jersey in *American Budget Corp.* v. *Furman, supra*, than by that of the Superior Court of Pennsylvania in *Commonwealth* v. *Stone*, 191 Pa. Super. 117, 155 A.2d 453. The Pennsylvania court leans heavily on *Adams* v. *Tanner*, 244 U.S. 590. As the New Jersey court points out, quoting *Staten Island Loaders, Inc.* v. *Waterfront Com-*

mission, 117 F.Supp. 308 (D.C. S.D.N.Y. 1953). "* * * * the U. S. Supreme Court has withdrawn from this extreme [fol. 223] view of the Fourteenth Amendment * * * * and has made it increasingly clear that it is not for the judiciary to decide whether the legislature has chosen the best remedy to meet an evil * * * *."

I would hold that the Kansas Act is not invalid as in violation of the Fourteenth Amendment and could deny the injunction.

Arthur J. Stanley, Jr., District Judge.

[fol. 224] [File endorsement omitted]

IN THE UNITED STATES DISTRICT COURT

FOR THE DISTRICT OF KANSAS

Civil Action No. W-2434

FRANK C. SKRUPA, d/b/a Credit Advisors, Plaintiff,

vs.

KEITH SANBORN, County Attorney for the County of Sedgwick, State of Kansas, and WILLIAM M. FERGUSON, Attorney General for the State of Kansas, Defendants,

WILBUR D. GEEDING, et al., Amici Curiae.

JOURNAL ENTRY OF JUDGMENT, PERMANENT INJUNCTION, AND RELEASE OF BOND—Filed January 8, 1962

This matter came on for trial on August 17, 1961, before a duly constituted three judge court consisting of Walter A. Huxman, United States Circuit Judge, retired, Delmas C. Hill, then United States District Judge and now United States Circuit Judge, and Arthur J. Stanley, Jr., United States District Judge, now Chief Judge, United States District Court for the District of Kansas; the plaintiff being present and represented by his attorneys Lawrence Weigand, Donald A. Bell, and Ernest McRae; the defendant

Keith Sanborn, County Attorney of Sedgwick County, Kansas, being present in person and appearing in his own behalf and also represented by Artie Vaughn, Assistant County Attorney and William Tomlinson, Assistant County Attorney; the defendant William M. Ferguson, Attorney General for the State of Kansas, being represented by Charles Henson, Jr., Assistant Attorney General; and Wilbur D. Geeding, et al., comprising unauthorized practice of law committee of Wichita Bar Association, represented by their Attorney, Wayne Coulson.

[fol. 225] Thereupon, the application of Wilbur D. Geeding, et al. to intervene was considered by the Court, and after hearing the arguments of counsel and being duly advised in the premises, the Court found that Wilbur D. Geeding, et al., comprising unauthorized practice of law committee of the Wichita Bar Association should be allowed to participate in this hearing as an Amici Curiae.

Thereupon, evidence was produced, and the Court took the matter under advisement with all parties to submit briefs in support of their position.

Now on this 27 day of November, 1961, after consideration of all the evidence and the briefs of counsel, Court finds that as a matter of law, Senate Bill No. 366, passed by the 1961 Session of the Kansas Legislature constitutes a violation of the rights of plaintiff as guaranteed by the Due Process clause of the Fourteenth Amendment to the federal constitution; and that judgment should be entered permanently enjoining the enforcement of said act against the plaintiff. The Court further finds that the motion of the defendant, Attorney General, to be dismissed from the case should be overruled.

It Is Therefore by the Court Considered, Ordered, Adjudged and Decreed That the motion of the defendant, William M. Ferguson, Attorney General for the State of Kansas, to be dismissed from this action is hereby overruled.

It Is Further by the Court Considered, Ordered, Adjudged and Decreed That the defendants, Keith Sanborn,

County Attorney of Sedgwick County, Kansas and William Ferguson, Attorney General of the State of Kansas, and their agents, associates, assistants, and all persons acting in their behalf be and are hereby enjoined permanently from filing any complaint against the plaintiff, his agents, servants, or employees for alleged violation of Senate Bill 366, Chapter 190, 1961 Kansas Session Laws or prosecut-
[fol. 226] ing any acts for violation of same by said plaintiff, his agents, servants, or employees or in any way attempting to enforce any of the provisions of said Senate Bill against said plaintiff, his agents, servants, or employees.

It Is Further by the Court Considered, Ordered, Adjudged and Decreed That the bond in the amount of $2500.00 posted by the plaintiff as security for restraining order and filed in this Court on the 30th day of June, 1961, is hereby released in its entirety; and the plaintiff and his surety thereon are fully released from any and all obligations contained in said bond.

Walter A. Huxman, United States Circuit Judge, Retired; Delmas C. Hill, United States Circuit Judge; Arthur J. Stanley, Jr., Chief Judge, United States District Court.

Approved:

Ernest McRae, Weigand Curfman Brainerd Harris & Kaufman, By Laurence Weigand.

Keith Sanborn, County Attorney, Sedgwick County, Kansas, Defendant, By William I. Tomlinson.

William M. Ferguson, Attorney General for the State of Kansas, By Charles N. Henson.

Wilbur D. Geeding, et al., on behalf of unauthorized practice of law committee of the Wichita Bar Association, Amici Curiae, By Wayne Coulson.

[fol. 227] [File endorsement omitted]

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF KANSAS

Civil Action Number W-2434

FRANK C. SCRUPA, d/b/a CREDIT ADVISORS, Plaintiff,

vs.

KEITH SANBORN, County Attorney, for the County of Sedgwick, State of Kansas, and WILLIAM M. FERGUSON, Attorney General for the State of Kansas, Defendant.

NOTICE OF APPEAL TO THE SUPREME COURT OF THE UNITED STATES—Filed January 26, 1962

I. Notice is hereby given that Keith Sanborn, County Attorney for the County of Sedgwick, State of Kansas, and William M. Ferguson, Attorney General for the State of Kansas, the defendant's above named, hereby appeal to the Supreme Court, of the United States from the final judgment permanently enjoining the enforcement of Senate Bill (366), passed by the 1961 Session of the Kansas Legislature, entered in this action on November 27th, 1961. This appeal is taken pursuant to 28 U.S.C.A. §1253.

II. The Clerk will please prepare a transcript of the record in this cause, for transmission to the Clerk of the Supreme Court of the United States and include in the said transcript the following:

1. Complaint of Plaintiff.
2. Temporary Restraining Order, Hill, C. J.
3. Order, Judges Huxman, Hill and Stanley to constitute a three Judge Court.
4. Motion of Defendant, William F. Ferguson, Attor-

[fol. 228] ney General of Kansas to dismiss.

5. Reporters transcript. of proceedings had on June 28th, 1961, hearing on application for restraining order.

6. Application to intervene, Wilbur D. Geeding, Wichita Bar Association Committee on unauthorized practice of law.

7. Answer of defendant, William F. Ferguson, Attorney General for the State of Kansas.

8. Answer of defendant, Keith Sanborn, County Attorney, for Sedgwick County, Kansas.

9. All briefs of plaintiff, defendant's and intervening defendant's and Amici Curiae.

10. Reporters transcript of proceedings had on August 17th, 1961, Topeka, Kansas.

11. Findings of fact and conclusions of law and opinions Huxman, Hill, Judges.

12. Dissenting opinion of Judge Stanley.

13. Journal Entry of Judgment, Permanent Injunction and Release of Bond.

14. All exhibits introduced by both plaintiff and defendant.

15. Notice of appeal and Service thereof.

III. The following questions are presented by this appeal:

A. [illegible] Act (Senate Bill 366) in question is not prohibitory but regulatory, and in either case the action of the Kansas Legislature is not so unreasonable, arbitrary, capricious and unrelated to any valid objective as to fall under the constitutional interdictions relied upon by the plaintiff?

B. The Act in question is not violative of Article I, Sec- [fol. 229] tion 10 of the Constitution and of Amendment Fourteen, Section I as depriving plaintiff of property without due process of law, denying the

equal protection of the laws and as impairing the obligations of existing contracts.

C. The Court erroneously overruled the legislative judgment in regulating the commercial pursuit known as "debt adjusting" when the subject is comprehended in the police power of the State, and debatable questions as to reasonableness are not for the Court but for the Legislature which is entitled to form its own judgment?

D. The United States District Court for the District of Kansas erred in declaring unconstitutional Senate Bill 366 which codified and clarified existing power of the Supreme Court of the State of Kansas, the statute is merely in aid of and does not supercede or detract from authority of the judicial department to control the practice of law. By judicial act the Supreme Court of the State of Kansas, as long ago as 1935, declared the business, so-called, of debt-adjusting, both at that time and later with respect to this same defendant, prior to the passage of the statute about which complaint is made, the District Court of Sedgwick County, Kansas declared this to be the unauthorized practice of law and the statute [fol. 230] merely gives an additional remedy to the inherent authority vested in the Court to govern persons who would be practitioners of the law and declared the public policy as expressed by the legislature of the State of Kansas, to be that a criminal sanction would attach to this unauthorized practice of law.

E. The plaintiff has no legal right to engage in the "debt adjusting" business which is prohibited by the statute and that, therefore, the statute could not have deprived plaintiff of any property rights of any kind or character, or of any of his personal rights.

F. The Legislature had the right to determine that, whether or not this was the practice of law it required for the protection of its citizens the giving of advice, which the plaintiff does not, or claims it

does not, give, and was a lawful exercise of the police powers of the State of Kansas, and the Constitutional provisions relied upon by plaintiff must yield to the legitimate police power of the State of Kansas.

G. The Court erred in overruling the motion of the defendant, Attorney General of the State of Kansas, to dismiss the action as to him because he was not a proper party defendant.

Keith Sanborn, County Attorney

[fol. 231] Proof of Service (omitted in printing).

[fol. 233]

[File endorsement omitted]

IN THE UNITED STATES DISTRICT COURT

FOR THE DISTRICT OF KANSAS

[Title omitted]

ORDER EXTENDING TIME WITHIN WHICH TO DOCKET APPEAL—March 23, 1962

Now, on this 23rd day of March, 1962, upon the timely application and motion of the defendants, and upon good cause being shown, it is ordered that the time for the defendants-appellants to docket the case on appeal in the Supreme Court of the United States, be extended pursuant to Rule 13, Rules of the Supreme Court of the United States, to and including April 23, 1962.

Delmas C. Hill, Judge.

Approved: Keith Sanborn, County Attorney for Sedgwick County, Kansas, By: Melvin M. Gradert, Deputy County Attorney.

Certificate of service (omitted in printing).

[fol. 238] [File endorsement omitted]

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF KANSAS

[Title omitted]

ORDER EXTENDING TIME WITHIN WHICH TO DOCKET APPEAL—April 23, 1962

Now, on this 23rd day of April, 1962, upon the timely application and motion of the defendants, and upon good cause being shown it is ordered that the time for the defendants-appellants to docket the case on appeal in the Supreme Court of the United States, be extended pursuant to Rule 13, Rule of Supreme Court of the United States, to and including May 7, 1962.

Delmas C. Hill, United States Circuit Judge.

Approved: Keith Sanborn, County Attorney, By Melvin M. Gradert, Deputy County Attorney.

Certificate of service (omitted in printing).

[fol. 239] Clerk's certificate (omitted in printing).

[fol. 240]

[File endorsement omitted]

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF KANSAS

[Title omitted]

ORDER TO TRANSMIT ORIGINAL EXHIBITS TO SUPREME COURT PENDING APPEAL—March 1, 1962

Now, on this 1st day of March, 1962, for good cause shown, it is by the Court

Ordered that the original exhibits admitted in evidence in the trial of the above action be transmitted in lieu of copies thereof to the United States Supreme Court.

Arthur J. Stanley, Jr., Judge.

[fol. 245] Clerk's certificate (omitted in printing).

[fol. 246]

SUPREME COURT OF THE UNITED STATES

No. 111—October Term, 1962

WILLIAM M. FERGUSON, Attorney General for the State of Kansas, et al., Appellants,

vs.

FRANK C. SKRUPA, d/b/a Credit Advisors.

Appeal from the United States District Court for the District of Kansas.

ORDER NOTING PROBABLE JURISDICTION—October 8, 1960

The statement of jurisdiction in this case having been submitted and considered by the Court, probable jurisdiction is noted and the case is transferred to the summary calendar.

Mr. Justice Goldberg took no part in the consideration or decision of this case.

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IN THE

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1962.

No. 953 111

WILLIAM M. FERGUSON, Attorney General for the State of Kansas, and KEITH SANBORN, County Attorney for the County of Sedgwick, State of Kansas,
Appellants,

vs.

FRANK C. SCRUPA, d/b/a Credit Advisors,
Appellee.

ON APPEAL FROM THE UNITED STATES DISTRICT COURT FOR THE DISTRICT OF KANSAS.

JURISDICTIONAL STATEMENT.

WILLIAM M. FERGUSON,
Attorney General for the State of Kansas,
State Office Building,
Topeka, Kansas,

KEITH SANBORN,
County Attorney,
County of Sedgwick, State of Kansas,
Pro-se, County Courthouse,
Wichita, Sedgwick County, Kansas,

MELVIN GRADERT,
Deputy County Attorney,
Sedgwick County, Kansas,
Attorneys for Appellants.

R. L. MERRIHALL, INC., 1108 Oak Street, Kansas City 6, Mo., HArrison 1-3030

IN THE

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1962.

No. .....

WILLIAM M. FERGUSON, Attorney General for the State of Kansas, and KEITH SANBORN, County Attorney for the County of Sedgwick, State of Kansas,
Appellants,

vs.

FRANK C. SCRUPA, d/b/a Credit Advisors,
Appellee.

ON APPEAL FROM THE UNITED STATES DISTRICT COURT FOR THE DISTRICT OF KANSAS.

JURISDICTIONAL STATEMENT.

Appellants appeal from the judgment of the United States District Court for the District of Kansas, entered on January 8, 1962, denying the motion of the appellant-defendant Attorney General, to be dismissed from the case, and the judgment permanently enjoining the enforcement, operation and execution of a statute of the State of Kansas, known as Senate Bill 366, passed by the 1961 Session of the Kansas Legislature, and submit this statement to show that the Supreme Court of the United States has jurisdiction of the appeal and that a substantial question is presented.

OPINION BELOW.

The opinion of the District Court for the District of Kansas, is not reported below. Copies of the opinion, findings of fact, conclusions of law and judgment are attached hereto as Appendix A.

JURISDICTION.

This suit was brought under 28 U.S.C.A. 1331, 1332, 2281, and 2284, to enjoin the enforcement, operation and execution of a statute of the State of Kansas, known as Senate Bill 366, passed by the 1961 Session of the Kansas Legislature, as being in conflict with the 14th Amendment to the Constitution of the United States, Section 1, and Article I, Section 10, of the Constitution of the United States; and as being in conflict with the Constitution of the State of Kansas, Article 2, Section 16. The judgment of the District Court was entered on January 8, 1962, and Notice of Appeal was filed in that Court on January 26, 1962. An order extending time for docketing the case to April 23, 1962, was entered by the Court below on March 23, 1962, and further extended by Order of the Court below on April 23, 1962, until May 7, 1962.

The jurisdiction of the Supreme Court to review the decision by direct appeal is conferred by Title 28, United States Code Annotated, Section 1253, and 2101 (b).

The following decisions sustain the jurisdiction of the Supreme Court to review the judgment on direct appeal in this case: *Rorick* v. *Board of Commissioners of Everglades Drainage District*, 59 S. Ct. 808, 307 U.S. 208, 83 L. Ed. 1242; *Stainback* v. *Mo Hock Ke Lok Po*, 69 S. Ct. 606, 336 U.S. 368; *Florida Lime and Avocado Growers, Inc.*, v. *Jacobsen*, 1960, 80 S. Ct. 568, 362 U.S. 73, 4 L. Ed. 2d 568.

QUESTIONS PRESENTED.

1. The Act (Senate Bill 366; 21-2464, 1961 Supplement to the General Statutes of Kansas) in question is not prohibitory but regulatory, and in any event the action of the Kansas Legislature is not so unreasonable, arbitrary, capricious and unrelated to any valid objection as to fall under the constitutional interdictions relied upon by the plaintiff?

2. The Act in question is not violative of Article I, Section 10, of the Constitution and of Amendment Fourteen, Section I as depriving plaintiff of property without due process of law, denying the equal protection of the laws and as impairing the obligations of existing contracts?

3. Whether the Court erroneously overruled the legislative judgment in regulating the commercial pursuit known as "debt adjusting" when the subject is comprehended in the police power of the State, and debatable questions as to reasonableness are not for the Court to decide but for the Legislature which is entitled to form its own judgment?

4. The United States District Court for the District of Kansas erred in declaring unconstitutional Senate Bill 366 (1961 Supplement, General Statutes of Kansas, 21-2464) which merely codified and clarified the existing power of the Supreme Court of the State of Kansas to control the practice of law. By judicial act the Supreme Court of Kansas, as long ago as 1935, declared the business, so-called of debt-adjusting to be the unauthorized practice of law. (*Depew* v. *Wichita Association of Credit Men,* 142 Kan. 403, 49 P.2d 1041). The District Court of Sedgwick County, Kansas, applied this ruling to the appellee-plaintiff even before the statute was enacted (Case No. B-6975, *Frank*

C. Scrupa v. *Gordon Oliver*, 10 Feb. 1961; excerpt of opinion of Court attached as appendix B). The Statute, merely gives an additional remedy to the inherent authority vested in the Court to govern persons who would be practitioners of the law and declared the public policy as expressed by the legislature, to be that a criminal sanction would attach to their unauthorized practice of law.

5. The appellee-plaintiff has no right to engage in the "debt adjusting" business which is prohibited by the statute herein, and the statute could not have deprived appellee of any property rights, or any of his personal rights.

6. The Legislature had the right to determine, aside from any question of the unauthorized practice of law, that it required for the protection of its citizens, that they be given competent legal advice and that competent legal advice not be withheld from them, which appellee could not give but does withhold, and the enactment of the statute was a lawful exercise of the police powers of the State of Kansas, and the Constitutional provisions relied upon by appellee must yield to the legitimate police power of the State of Kansas.

STATUTE INVOLVED.

21-2464, General Statutes of Kansas, 1961 Supplement.

An Act concerning the business of debt adjusting; making certain acts unlawful and prescribing penalties therefor.

Be it enacted by the Legislature of the State of Kansas:

Section I. For the purpose of this act, "debt-adjusting" means the making of a contract, express, or implied with a particular debtor whereby the debtor agrees to pay

certain amount of money periodically to the person engaged in the debt adjusting business who shall for a consideration distribute the same among certain specified creditors in accordance with a plan agreed upon. Whoever engages in the business of debt adjusting shall be guilty of a misdemeanor and upon conviction thereof shall be punished by a fine of not more than ($500.00) five hundred dollars, or by imprisonment in the county jail not exceeding six (6) months, or by both such fine and imprisonment: Provided: that the provisions of this act shall not apply to those situations involving debt adjusting as herein defined incurred incidentally in the lawful practice of law in the state.

Section 2. This act shall take effect and be in force from and after its publication in the statute book.

STATEMENT.

Appellee, hereinafter referred to as Scrupa, is an individual and a citizen and resident of the State of Nebraska, and appellee is and at all times material hereto has been doing business under the name and style of "Credit Advisors". Credit Advisors has offices in Omaha, Nebraska and Wichita, Sedgwick County, Kansas. Credit Advisors has been engaged in the business of debt adjusting as defined by Senate Bill 366 since September, 1958, and engaged in said business in Wichita, Kansas, since April, 1960.

In general the business may be defined as consisting of making arrangements with persons in financial difficulties, by which, for a fee, appellee undertakes to marshall all his client's creditors and his assets and undertakes to effect an agreement by which the debtor shall pay plaintiff a certain percentage of his earnings which are then paid, as agreed upon, to his creditors. This limited descrip-

tion of the appellee's business is sufficient to pinpoint the questions presented herein.

This action was filed on June 27, 1961, in the United States District Court for the District of Kansas under Title 28, U.S.C.A., Sections 1331, 1332, 2281, and 2284 to enjoin the enforcement, operation and execution of Senate Bill 366, 1961 Legislative Session. The District Court on June 28, 1961, granted a temporary restraining order against appellants until a three-judge Federal Court could be convened. The three-judge District Court after hearing on August 17, 1961, found, one judge dissenting, the act in question to be prohibitory not regulatory; but even if construed to be regulatory, unreasonable and an unwarranted regulation of a lawful business, and therefore, a violation of the rights of appellees as guaranteed by the Federal Constitution. It was ordered, adjudged and decreed by the Court that defendants or their agents, servants or employees are hereby enjoined permanently from filing any complaint against the plaintiff, his agents, servants, or employees for alleged violation of Senate Bill 366, Chapter 190, 1961 Kansas Session Laws or prosecuting any acts for violation of same by said plaintiff, his agents, servants, or employees or in any way attempting to enforce any of the provisions of said Senate Bill against said plaintiff, his agents or employees.

THE QUESTIONS ARE SUBSTANTIAL.

The statute is challenged as violative of Article I, Section 10, of the Constitution and of Amendment Fourteen, Section I, as depriving appellee-plaintiff of property without due process of law, denying the equal protection of the laws and as impairing the obligations of existing contracts.

Treatment and comment in other jurisdictions on the problem of debt adjusting should be considered in weighing the reasonableness and appropriateness of the action taken by the Kansas Legislature.

That these issues are generally important and particularly important to the citizens of Kansas is demonstrated by the various and numerous cautionary articles and comments. See for example: *Good Housekeeping Magazine,* February, 1959, "Warning, The Debt Adjustors are Back!" Murray Leigh Bloom, *"Debt Adjustment—Meanest Racket Out"* The Legal Aid Briefcase, Vol. 13, No. 5, June, 1955, p. 99. The Bloom Article was condensed in the October 1955, *Readers Digest,* at page 131, under the heading *"Beware of Debt-Adjustment Racketeers".*

The subject has received much attention in the Unauthorized Practice News, publication of the American Bar Association Committee on Unauthorized Practice of Law.

It certainly is not insignificant in appraising the action of the Kansas Legislature to mention the number of States which in a short span of years have prohibited and in some cases regulated the debt adjustment business. See the summary of State Statutes appearing in the opinion in *American Budget Corporation* v. *Furman,* 67 N.J. Super. at 138. They furnish additional meaning and support to the substantiality of the questions herein involved.

The issues involved in this appeal are similar if not identical to those raised in various State Courts. Chronologically, the first of these cases is *Home Budget Service* v. *Boston Bar Association,* 335 Massachusetts 228, 139 N.E.2d 387, decided in 1957. The statute there involved defined the furnishing of advice or services in connection with a debt pooling plan as the practice of law and made its practice by laymen a misdemeanor. The Court upheld the act. A New Jersey statute involving debt adjusting

was upheld in *American Budget Corporation* v. *Furman*, 67 N.J. Super. 134, 170 A.2d 63; affirmed on opinion below, 36 N.J. 129, 175 A.2d 622. The opinion collects the statutes on debt adjusting, and discusses and concludes contra the Court below in the instant case.

The third case is *Commonwealth* v. *Stone*, 191 Pa. Super. 117, 155 A.2d 453, in which a debt adjustment statute was held unconstitutional.

The majority of the three-judge Court below relied heavily upon *Commonwealth* v. *Stone*, *supra*. The Court below concluded the statute to be identical and since the Pennsylvania Court decided the act was an unlawful abuse of police power decided likewise in this case. This in spite of the anomalous situation in the *Commonwealth Case*. Although, there were then in existence similar statutes in Florida, Georgia, Maine, New York, Ohio, and Wyoming, none was called to the attention of the Court which proceeded on the fallacious assumption that the Pennsylvania statute was unique (155 A.2d 456). Also, the *Boston Bar Case*, decided almost three years earlier, was not called to the court's attention.

The Pennsylvania opinion relied heavily upon *Adams* v. *Turner*, 244 U.S. 590, decided in 1917. As pointed out in *American Budget Corporation* v. *Furman*, *supra*, there has been a marked change in judicial thought since 1917. The *Adams-Turner* case is expressly disapproved in *Lincoln Federal Labor Union* v. *Northwestern Iron and Metal Co.*, 335 U.S. 525, 535-537.

The majority of the District Court below found that the practice of debt-adjusting is subject to great abuse (page A4, opinion attached hereto as Appendix A). However, the Court, while frankly admitting the State can by proper regulation, set up standards and qualifications, and even limit the business to certain classes of qualified persons,

substitutes its judgment for that of the legislature of Kansas in dealing with the situation.

The judicial treatment of governmental action in this area runs to a uniform pattern; it is demanded only that the exercise of police power in a statute not be unreasonable, and the means selected have a real and substantial relation to the object sought to be obtained. This standard is recognized in *Nebbia* v. *People of State of New York*, 291 U.S. 502, 54 S. Ct. 505 (1934). As was said in *American Budget Corp.* v. *Furman*, quoting from *Staten Island Loaders, Inc.*, v. *Waterfront Commission*, 117 F. Supp. 308 (D.C. S.D. N.Y. 1953) "* * * the United States Supreme Court has withdrawn from this extreme view of the Fourteenth Amendment * * * and has made it increasingly clear that it is not for the judiciary to decide whether the Legislature has chosen the best remedy to meet an evil * * *" See in this connection *Clark* v. *Paul Gray*, 306 U.S. 583, 59 S. Ct. 744, 83 L. Ed. 1001; *Ward and Gaw* v. *Krinsky*, 259 U.S. 503, 42 S. Ct. 529, 66 L. Ed. 1033. The judgment of the District Court is in direct conflict with the attitude of the Courts in this area of governmental regulation.

Article I, Section 10 of the Constitution is no restriction upon the legitimate police power of the States. All persons contracting do so with the knowledge that "the police power of the Government to protect * * * the general welfare of the people, is paramount to any rights under contracts between individuals". *East New York Savings Bank* v. *Hahn*, 326 U.S. 230, 232, quoting from *Manigault* v. *Springs*, 199 U.S. 473, 480. The police power is not limited to only health and safety of society, but extends to its financial security.

The equal protection and due process clause of the Fourteenth Amendment are similarly circumscribed. *Morey* v. *Doud*, 354 U.S. 457, 463, quoting from *Lindsley* v. *National Carbonic Gas Co.*, 220 U.S. 61, 76.

If plaintiff's business constitutes the practice of law, the statute is valid, because the right to practice law is not a privilege or immunity of a citizen of the United States within the purview of any constitutional provision. *Bradwell* v. *Illinois*, 83 U.S. (16 Wall.) 130; *In re Lockwood*, 154 U.S. 116; *Green* v. *Elbert*, 8 Cir., 63 Fed. 308; *Mitchell* v. *Grennough*, 9 Cir., 100 F.2d 184.

Without regard to whether plaintiff's business constitutes the practice of law, if any state of facts can reasonably be conceived from which the Legislature could conclude that the welfare of its citizens required at least availability of legal advice as an incident to such a business, the statute is equally valid.

APPELLEE-PLAINTIFF'S ADMISSIONS.

Plaintiff-appellee obtains his clientele by advertising his ability to secure relief for embarrassed debtors. When a prospective client appears, plaintiff explains the virtues and advantages of his plan of prorating payments among creditors at a lesser rate and over a longer period of time than called for by the various contracts. He does not mention the relief obtainable under Wage Earner Plan or other chapters of the Bankruptcy Act. He does not mention the consequences of failure of his proposed scheme. He does not discuss the exemption laws of Kansas. He does not discuss nor consider validity of the indebtedness. (Transcript of Hearing before Judge Hill, on The Temporary Restraining Order, of June 28, 1961, examination of Mr. Scrupa.)

In *Depew* v. *Wichita Association of Credit Men*, 142 Kan. 403, 49 P.2d 1041, the facts as found by the Court were:

"One department of the work of the association that has been of considerable importance has been the making of agreements or assignments for the benefit of creditors, and the use of what is known as a trust mortgage, whereby M. E. Garrison as trustee liquidates businesses, makes settlements with creditors, instead of the usual bankruptcy procedure in the Federal Court or receivership in state courts. Under such agreements as plaintiff's exhibit No. 40 the business is not brought into court for liquidation but is handled outside by Garrison as trustee.

"An owner of a business in financial difficulties is seen by a representative of the association or he calls upon the association or is sent in by a creditor or someone else interested. It is the custom of M. E. Garrison to advise with him, explain to him the difference between such an arrangement and bankruptcy proceedings and inform the business man what he considers to be the advantages of the liquidation without bankruptcy. While Mr. Garrison does not prevent him from seeing his attorney he attempts by statements or representations to show him the advantages of the plan being outlined and if the prospect is agreeable has him sign a contract. Plaintiff's exhibit '12' among other things provides for the taking of an audit of the business at $25.00 per day paying a commission for supervising and adjusting the claims of the creditors. The contracts used in these cases were prepared some years ago by a now distinguished Wichita attorney. Such papers, agreements and so forth as are needed for the complete handling of the business in this liquidation are furnished by the association, prepared blanks being used. The contracts prepared and signed and the resulting work on the part of the representatives of the association results in complete liquidation of the individual business, for which the association receives compensation. The liquidating merchant receives all the necessary advice through Mr. Garrison and officers of the association."

The trial court's conclusion of law was:

> "The liquidation of a business by this method, the contracts and forms used and the advice given with services which require legal skill and knowledge constitutes practice of law." (142 Kan. 410, 49 P.2d 1045).

This conclusion of law was expressly approved by the Supreme Court and the judgment of injunction affirmed (142 Kan. 416, 49 P.2d 1049).

In the same case the Court held against appellant's contention that injunction against its activities was a violation of Section 10 of Article I of the Constitution of the United States and of amendments fifth and fourteenth thereto, the same provisions relied upon by plaintiff in the case at bar. The Supreme Court denied certiorari, 297 U.S. 710.

The defendant in the cited case performed services in the liquidation of the indebtedness of financially embarrassed debtors. The plaintiff in the case at bar does precisely the same thing. Certainly the legislature was entitled to conclude that such conduct constituted the practice of law.

We think it clear that the legislature might reasonably conclude that an embarrassed debtor employing an agency to work out agreements with creditors for liquidation of his debts needs legal advice as to validity and priority of his indebtedness, the exemption laws of the State of Kansas, and an explanation of remedies available to him and of the cost and consequences of resorting to such remedies available to him.

If the plaintiff furnishes such advice he is certainly engaged in the practice of law.

If plaintiff does not furnish such advice, the debtor acts blindly, unaware that other remedies may be far more ad-

vantageous as well as far less expensive than the scheme extolled by plaintiff.

The State of Kansas in the exercise of its police power has determined that it is an imposition upon its citizens for persons incompetent to advise an embarrassed debtor as to the remedies available to him; to solicit employment and to undertake to advise and conduct a debt liquidation program for such debtors.

If the State may prohibit the practice of medicine, dentistry, barbers, cosmetology by unlicensed and unqualified persons, it may prohibit the business of debt liquidation by unlicensed and unqualified persons.

It is contended that the statute does not regulate, but prohibits. It prohibits the activity only by unlicensed persons. That is the essence of regulation. Plaintiff or any other person may procure a license to practice this activity by becoming licensed to practice law. Plaintiff wishes to conduct this activity without the need for securing the qualifications of one licensed to practice law, and even more importantly, without subjecting himself to the prohibitions and restraints and responsibilities contained in the Canons of Ethics.

Plaintiff testified that debt adjustment was a business conducted in metropolitan areas of many states. That fact has no bearing upon the legislature's right to determine that conduct of such business by persons not qualified as lawyers is contrary to the best interests of its citizens. Nine other legislatures reached the same conclusion.

It is submitted that the decision of the District Court fails to recognize the Act of the Kansas Legislature as a proper exercise of the police power with a reasonable relationship to its objective, and that by its decision it authorizes the appellee-plaintiff to engage in prohibited ac-

tivity as declared by the Kansas Legislature in Senate Bill 366; which Act is designed to strike at a recognized evil; that its constitutionality should be upheld for the reasons set forth above.

We believe that the questions presented by this appeal are substantial and that they are of public importance.

Respectfully submitted,

WILLIAM M. FERGUSON,
Attorney General,
Topeka, Kansas,
KEITH SANBORN, PRO-SE,
Deputy County Attorney,
Sedgwick County,
Wichita, Kansas,
MELVIN M. GRADERT,
Deputy County Attorney,
Sedgwick County,
Wichita, Kansas,
Of Counsel.

APPENDIX "A".

IN THE UNITED STATES DISTRICT COURT FOR THE DISTRICT OF KANSAS

FRANK C. SKRUPA, d/b/a CREDIT ADVISORS,

Plaintiff,

vs.

KEITH SANBORN, County Attorney, for the County of Sedgwick, State of Kansas, and WILLIAM M. FERGUSON, Attorney General for the State of Kansas,

Defendants.

Civil Action No. W-2434.

Findings of Fact, Conclusions of Law and Opinion.

(Filed November 27, 1961.)

This is an action to enjoin the enforcement, operation and execution of a statute of the State of Kansas, known as Senate Bill 366, passed by the 1961 Session of the Kansas Legislature. The grounds on which the action is predicated are that the act is void because it violates and infringes plaintiff's rights guaranteed by the due process clause of the Fourteenth Amendment to the United States Constitution.

The action being one to enjoin the enforcement of a state statute, a Three-Judge Court was convened. The cause came on regularly for hearing at Topeka, Kansas, on the 17th day of August, 1961, plaintiff being present by his attorneys, Lawrence Weigand, Don Bell and Ernest McRae, and the defendants being present by their attorneys, Charles Hanson, Assistant Attorney General; Keith

Sanborn, County Attorney, Sedgwick County; William Tomlinson, Assistant County Attorney, Sedgwick County; Arty Vaughn, Assistant County Attorney, Sedgwick County; and Wayne Coulson. At the conclusion of the hearing, the case was taken under advisement. Briefs were requested. These have been considered by the court. The court finds these facts.

FINDINGS OF FACT.

Plaintiff operates a business known as "Credit Advisors" with offices in Omaha, Nebraska, and Wichita, Kansas. The business consists of debt adjustment. In general, the business may be defined as consisting of making arrangements with persons in financial difficulties, by which, for a fee, plaintiff undertakes to marshall all his client's creditors and his assets and undertakes to effect an agreement by which the debtor shall pay plaintiff a certain percent of his earnings which are then paid, as agreed upon, to his creditors. This sketchy description of plaintiff's business is sufficient to pinpoint the questions presented in this case.

The 1961 Act referred to above deals with debt adjustment. Plaintiff's business falls within the provisions of the act. The act reads, as follows:

> "SECTION 1. For the purpose of this act, 'debt adjusting' means the making of a contract, express, or implied with a particular debtor whereby the debtor agrees to pay a certain amount of money periodically to the person engaged in the debt adjusting business who shall for a consideration distribute the same among certain specified creditors in accordance with a plan agreed upon. Whoever engages in the business of debt adjusting shall be guilty of a misdemeanor and upon conviction thereof shall be punished by a fine of not more than five hundred dollars ($500), or by

imprisonment in the county jail not exceeding six (6) months, or by both such fine and imprisonment: Provided, That the provisions of this act shall not apply to those situations involving debt adjusting as herein defined incurred incidentally in the lawful practice of law in this state."

/s/ Walter A. Huxman,
United States Circuit Judge,
Retired.

(Signed) Delmas C. Hill,
United States Circuit Judge.

(Signed) Arthur J. Stanley, Jr.
Chief Judge, United States
District Court.

CONCLUSIONS OF LAW.

The court concludes, as a matter of law, that the act in question is prohibitory and not regulatory; but even if construed as regulatory, it is an unreasonable and unwarranted regulation of a lawful business, and, therefore, constitutes a violation of the rights of plaintiff as guaranteed by the due process clause of the Fourteenth Amendment to the Federal Constitution.

/s/ Walter A. Huxman,
United States Circuit Judge,
Retired.

(Signed) Delmas C. Hill,
United States Circuit Judge.

Chief Judge, United States
District Court.

OPINION.

Debt adjustment is a business affected by a public interest and because of its nature is subject to regulation by a state under its police powers. State police powers are broad and comprehensive and it is held, without exception, that federal courts should be loath to interfere with the exercise of such powers. But, on the other hand, we have a clear duty and mandate to protect federal rights guaranteed by the Constitution, and this duty we must not shirk.

The Attorney General has filed a motion to dismiss as to him on the ground that he is not a proper party. There are a number of state cases of a similar nature in which the Attorney General was joined as a party defendant.[1] Apparently the propriety of joining him was not specifically challenged. It seems to have been generally accepted that he is a proper party defendant. The Attorney General of Kansas is the general law enforcement officer of the state. He supervises the activities of county attorneys. In proper cases, he may direct them to enforce the laws of the state. The motion to dismiss should be overruled.

The decision turns upon whether the act in question is regulatory or prohibitory, and if regulatory, whether it manifests a reasonable and necessary regulation of a business which, although subject to police power, is nonetheless a lawful business. A right to regulate does not carry with it the right to adopt unreasonable or unfair regulations.[2] Since there is no dispute in the principles of law which must be applied, and since we are here concerned

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1. *Gilbert* v. *W. R. Matthews, Co. Attorney, and John Anderson, Atty. Gen.*, 352 P.2d 58.

2. *Gilbert* v. *W. R. Matthews, Co. Attorney, and John Anderson, Atty. Gen., supra.*

with the construction of the Kansas statute by application of these principles, no useful purpose would be served by citation and discussion of a number of decisions construing somewhat similar statutes of other states, especially where such statutes differ in material respects from the one under consideration here.

Kansas, in passing the act in question, apparently took it almost verbatim from a similar Pennsylvania statute. The wording of the two acts is almost identical. The Superior Court of Pennsylvania in a well reasoned opinion declared the Pennsylvania act unconstitutional. It held that the Pennsylvania act was not regulatory but prohibitory. It held that prohibiting engagement in a lawful business was an abuse of the police power.[3] We are in full accord with the reasoning and philosophy of the Pennsylvania court.

Debt adjustment by its very nature may lend itself to great abuses and because of this the state has power to regulate it to the end that its citizens may not be overreached by unscrupulous persons. No doubt, the state can, by proper regulations, set up standards and qualifications, and even limit the business to certain classes of qualified persons. But such regulations must be founded on reason. Whatever the state does must bear a reasonable relation to what the state seeks to do—protect those in financial distress from exploitation by unscrupulous and dishonest operators.

A careful analysis of the act fails to show anything that can be denominated regulatory. After defining debt adjustment, the act states that anyone who "engages in the business of debt adjustment shall be guilty * * *" of an offense and punished as defined in the act.

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3. See *Commonwealth* v. *Stone*, 155 A.2d 453.

The only exception is that the "act shall not apply to those situations involving debt adjusting as herein defined incurred incidentally in the lawful practice of law in this state." This, in our opinion, is not a regulation, or if it is, it is an unreasonable regulation. To say that a lawyer may adjust debts only as an incident to a case which is otherwise before him, is most unreasonable. If a lawyer, engaged in the regular practice of the law, concluded there was a greater field for him in devoting all his time to debt adjustment, rather than to the general practice of law, he could not discontinue his general practice and devote his full time to debt adjustment. He could not do so because he can adjust debts only as an incident to his general law practice. We conclude, first, that the act is prohibitory and not regulatory; and that it prohibits anyone from engaging in the business of debt adjustment. But even if the exception is considered as regulatory, it is an unreasonable regulation of a lawful business. We know of no statute aside from the Pennsylvania statute which has gone that far.

Our attention is called to the case of *American Budget Corp.* v. *Furman*, 170 A.2d 63, in which the New Jersey Superior Court reached a conclusion contrary to that of the Pennsylvania Court and held a somewhat similar act constitutional. No useful purpose would be served by a detailed analysis of the Furman case. It is sufficient to say that it differed in many particulars from the Pennsylvania case and from the act we have before us here. We adopt the reasoning of the Pennsylvania case, *Commonwealth* v. *Stone*, *supra*.

Our attention has also been called to the case of *Williamson* v. *Lec Optical Company*, 348 U.S. 483, in which the Supreme Court held constitutional a rather drastic act by the Oklahoma legislature regulating the business of fitting

and selling glasses as a valid exercise of the police power. But that act did not outlaw the business of fitting lenses to a face or duplicating or replacing into frames, lenses or other optical appliances. The attack on the statute was that it was unlawfully discriminatory in its provisions as to who could engage in such business or the conditions under which the business could be carried on. Under the Kansas statute, no one can engage in debt adjustment as a business. Debt adjustment, though recognized as a lawful business, is declared unlawful.

Judgment will be entered denying the motion of the defendant, Attorney General, to be dismissed from the case. A further judgment will be entered permanently enjoining the enforcement of the act against plaintiff.

/s/ Walter A. Huxman
United States Circuit Judge, Retired

(Signed) Delmas C. Hill
United States Circuit Judge

Chief Judge, United States District Court.

IN THE UNITED STATES DISTRICT COURT FOR THE DISTRICT OF KANSAS

FRANK C. SKRUPA, d/b/a CREDIT ADVISORS, Plaintiff, vs. KEITH SANBORN, County Attorney, for the County of Sedgwick, State of Kansas, and WILLIAM M. FERGUSON, Attorney General for the State of Kansas, Defendants.	No. W-2434

Dissenting Opinion.

(Filed November 27, 1961.)

ARTHUR J. STANLEY, JR., District Judge.

I cannot agree with the conclusion that the questioned statute is unconstitutional.

That debt adjustment is a business affecting the public interest is not questioned. It has been the subject of legislation in many states. (See the summary of state statutes appearing in the opinion in *American Budget Corp.* v. *Furman*, 67 N.J. Super. 134, 170 A.2d 63.) Regulation of the business, therefore, is a proper function of the state in the exercise of its police power. I believe that the Act under attack is an effort on the part of the legislature of Kansas to impose reasonable and necessary regulations on a business affecting the financial stability of the citizens of Kansas.

The Act provides in effect that debt adjustment as therein defined may be engaged in only by attorneys, and then only when carried on "incidentally in the lawful practice of law." It is true that a lawyer who has

abandoned his general practice to devote his full-time to debt adjustment would be in violation of the statute. I feel sure that this is exactly what the legislature intended. An attorney engaged in general practice, when consulted by a client whose financial affairs had become involved, would, quite naturally, explore all avenues open to his client. He would inquire as to the possibility of defenses to the claims, consider the applicability of exemption laws, explain the advantages and disadvantages of bankruptcy, and might or might not suggest the initiation of a debt adjustment scheme. One admitted to the Bar but who had chosen to become a debt adjuster and to limit himself to that one narrow field would be likely to adopt a different approach to the problem. He would not be expected to advise his client to seek relief through another means than that in which he specialized exclusively. (If he did, would he not by so doing bring himself within the proviso so that he would not then be barred by the statute?)

In arriving at a decision as to the necessity or reasonableness of the regulation, it is not essential that the court agree with the methods adopted by the lawmakers, or that it be concerned with the wisdom of the legislation. The scope of the court's inquiry should be limited to whether any state of facts, known or reasonably to be assumed, support the legislative judgment. *American Budget Corp.* v. *Furman, supra; Williamson* v. *Lee Optical Co.*, 348 U.S. 483.

I am more impressed by the reasoning of the Superior Court of New Jersey in *American Budget Corp.* v. *Furman, supra*, than by that of the Superior Court of Pennsylvania in *Commonwealth* v. *Stone*, 191 Pa. Super. 117, 155 A.2d 453. The Pennsylvania court leans heavily on *Adams* v. *Tanner*, 244 U.S. 590. As the New Jersey court points

out, quoting *Staten Island Loaders, Inc.*, v. *Waterfront Commission*, 117 F. Supp. 308 (D.C. S.D. N.Y. 1953), "* * * the U. S. Supreme Court has withdrawn from this extreme view of the Fourteenth Amendment '* * * and has made it increasingly clear that it is not for the judiciary to decide whether the legislature has chosen the best remedy to meet an evil *.* *.'"

I would hold that the Kansas Act is not invalid as in violation of the Fourteenth Amendment and could deny the injunction.

(Signed) Arthur J. Stanley, Jr.,
District Judge.

APPENDIX "B".

No. B-6975 10 Feb. 1961.

Frank C. Skrupa v. Gordon Oliver

The Court: In this case, as I understand it, the defendant was employed by the plaintiff and received training to the extent of a couple of months in Omaha, then was brought to Wichita, wherein a branch office or another office, was opened by the plaintiff; that for some 8 months or so he worked there as manager of the office in Wichita, and then his employment was terminated. That after he had worked a couple of weeks in Omaha, he entered into a contract marked Plaintiff's Exhibit 1 in this case. He was trained from that of a person having worked in safety up in the position to manage the type of business that the plaintiff maintains in Wichita.

There is no evidence before this Court that the plaintiff has been damaged in any way by the defendant going to work for someone who is in a similar type of business. As a matter of fact, the evidence shows, in my opinion, that the plaintiff has not received any damages. There is no testimony here to show, and as a matter of fact to the contrary, that any of the plaintiff's clients as they refer to them, were taken by the defendant to his new employer. As a matter of fact, as I interpret the testimony he would have no reason, or could not attempt to take them because the agreement was already made between the so-called clients and the plaintiff.

I see no trade secrets involved here. I was trying to elicit it from the witnesses this morning wherein he obtained information that would be, by the use of it, would be detrimental to that of the plaintiff.

This is not the type of case of personal contact such as your route man that we have had cases here in Wichita where I have restrained route men from going back into the same area, and not restrained them from working for competitive company in a different area, as long as they did not interfere in the routes where they had been employed.

Injunction is an extraordinary remedy; it is to be brought only on rare occasions wherein the damages are irrepairable. In addition to that, I am of the opinion that the plaintiff's business as conducted here in Wichita smacks of authorized practice of law, and for these reasons the demurrer to the evidence will be sustained.

* * *

The court is of the opinion, Mr. McRae that when a person comes into this court asking for equitable relief in the form of an injunction that they must come into this court with clean hands. Therefore, I am of the opinion that this plaintiff's conduct of business in the city of Wichita is bordering on the unlawful practice of law and he is not entitled to come into this community and practice law. That is merely an additional reason, other than the two that I have mentioned. This court is vitally interested, not only as a judge, but as President of this bar association that we not have unauthorized practice of law in the city of Wichita or any place else in the state, and I think that is part of the responsibility of the courts and judges thereof.

* * *

Eliminating that phase of it and going strictly to the pleadings and the testimony other than that with reference to possibly the unauthorized practice of law as I stated in my first two reasons, there were no trade secrets in-

volved here that have been presented to this court. There was no loss by the plaintiff according to the testimony here, that the defendant was not such that either his personal contacts with the plaintiff's clients as he referred to them, in a position to take them away from the plaintiff. I see from the evidence before there has been no damage done to the plaintiff.

• • •

I don't see any testimony before this court wherein I can see that the plaintiff would ever be injured, from the testimony before this court.

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IN THE

SUPREME COURT OF THE UNITED STATES

No. ~~953~~. 111

WILLIAM M. FERGUSON, Attorney General for the State of Kansas, and KEITH SANBORN, County Attorney for the County of Sedgwick, State of Kansas,
Appellants,

VS.

FRANK C. SCRUPA, d/b/a CREDIT ADVISORS,
Appellee.

ON APPEAL FROM THE UNITED STATES DISTRICT COURT FOR THE DISTRICT OF KANSAS.

MOTION TO AFFIRM.

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Wichita 2, Kansas,
DONALD A. BELL,
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Wichita 2, Kansas,
Attorneys for Appellee.

E. L. MENDENHALL, INC., 1108 Oak Street, Kansas City 6, Mo., HArrison 1-3050

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IN THE

SUPREME COURT OF THE UNITED STATES

No. 953.

WILLIAM M. FERGUSON, Attorney General for the State of Kansas, and KEITH SANBORN, County Attorney for the County of Sedgwick, State of Kansas,
Appellants,

vs.

FRANK C. SCRUPA, d/b/a CREDIT ADVISORS,
Appellee.

ON APPEAL FROM THE UNITED STATES DISTRICT COURT FOR THE DISTRICT OF KANSAS.

MOTION TO AFFIRM.

Pursuant to Rule 16, Paragraph 1(c) of the revised rules of this court the Appellee, Frank C. Scrupa, d/b/a Credit Advisors, moves that the judgment of the District Court be affirmed on the ground that the questions raised by Appellants are so insubstantial as not to warrant further argument.

STATEMENT OF THE CASE.

This is a direct appeal from a judgment of a statutory three-judge district court entered November 27, 1961, pursuant to 28 U.S.C.A. 1331, 1332, 2281, 2284 and 2201, which set aside and permanently enjoined enforcement of an act passed by the 1961 Session of the Kansas Legislature, Senate Bill 366 (now known as Kansas G.S., 1961 Supplement, 21-2464), as a violation of the rights of the Appellee guaranteed by the Due Process Clause of the United States Constitution. The Act was also attacked on the ground that it denied plaintiff the equal protection of the laws and impaired the obligations of existing contracts contrary to the Fourteenth Amendment to the Constitution of the United States, Section 1, and contrary to Article I, Section 10 of the United States Constitution and further, that it was violative of the Constitution of the State of Kansas, Article II, Section 16, which provides "No bill shall contain more than one subject which shall be clearly expressed in its title * * *."

The content and substance of Senate Bill 366 are practically identical with the content and substance of a prior act from Pennsylvania. A different label was used, the Kansas act substituting "Debt Adjusting" for "Budget Planning". The Pennsylvania act, one year and seven months prior to its almost verbatim adoption by the Kansas legislature was stricken down as unconstitutional by the Pennsylvania Court in *Commonwealth* v. *Stone,* (decided November 11, 1959) 155 A.2d 453, 191 Pa. Super. 1117.

The Kansas Act (Senate Bill 366, G.S., 1961 Supp., 21-2464. An Act Concerning the Business of Debt Adjusting; Making Certain Acts Unlawful and Prescribing Penalties Therefor:

Debt Adjusting; Unlawful Acts; Penalty. For the purpose of this act, "debt adjusting" *means the making of a contract, express, or implied with a particular debtor whereby the debtor agrees to pay a certain amount of money periodically to the person engaged in the* debt adjusting *business who shall for a consideration distribute the same among certain specified creditors in accordance with a plan agreed upon. Whoever engages in the business of* debt adjusting shall be *guilty of a misdemeanor and upon conviction thereof shall be* punished by *a fine of not more than five hundred dollars ($500)*, or by *imprisonment* in the county jail not exceeding six (6) months, *or* by *both* such fine and imprisonment: *provided*, that *the provisions of this act shall not apply to those situations involving debt adjusting as herein defined incurred incidentally in the lawful practice of law in this state. (L. 1961, ch. 190, § 1; June 30.)*

[Emphasis supplied.]

The Pennsylvania Act. The Act of Assembly, 1939, June 24, P.L. 872, Section 897, Amended 1955, Nov. 30, P. L. 755, Section 1; 18 P. S. 4897, provides:

(a) "Budget Planning", as used in this section, *means the making of a contract, express or implied, with a particular debtor whereby the debtor agrees to pay a certain amount of money periodically to the person engaged in the* budget planning *business, who shall, for a consideration, distribute the same among certain specified creditors in accordance with a plan agreed upon.*

(b) *Whoever engages in the business* of budget planning is *guilty of a misdemeanor, and upon conviction thereof, shall be* sentenced to pay *a fine of not more than five hundred dollars ($500.-00)* or undergo *imprisonment* of not more than (1) year, *or both, provided that the provisions of this act shall not apply to those situations involving budget planning as herein defined incurred incidentally in the practice of law in the Commonwealth.*

Appellee is a resident of the State of Nebraska and he conducts in Wichita, Kansas, a business which involves "debt adjusting" as defined by the Kansas Act which attempted to make this a crime. The Court below heard testimony that the Appellee had spent more than twenty thousand dollars in his business in Kansas and had in force a substantial number of existing contracts with debtors which involved the handling of an average of fifteen thousand dollars per month in accounts. His employees are bonded to prevent loss against embezzlement or dishonesty. His service consists of setting up a budget for the debtor and entering into a contract with the debtor by which he agrees to receive from the debtor a specified sum periodically and, in turn, to distribute that sum to the persons specified by the debtor, less a fee which varies from 5% to 9% of the amount involved. The business has been carried on by reputable firms in this country for over a quarter of a century and similar businesses are operated in most of the metropolitan areas of the country. The plaintiff offers mere financial budgeting service only, does not attempt to advise debtors as to any of their legal rights and he does not attempt to compromise or discount the indebtedness.

The court below concluded that the business was a lawful business and that the act was prohibitory in character and, even if construed as regulatory, was unreasonable and unwarranted, it being undisputed at the trial that the enforcement of Senate Bill No. 366 would put the plaintiff out of business.

ARGUMENT.

This decision is not only consistent with but was compelled by well established concepts of constitutional law.

A state cannot exclude a person from an occupation in a manner that contravenes the due process or equal protection clause of the Fourteenth Amendment. *Schware* v. *Board of Bar Exam. of State of N. M.*, 353 U.S. 232, 77 S. Ct. 752, 756; *Dent* v. *State of W. Va.*, 129 U. S. 114, 9 S. Ct. 231, 32 L. Ed. 623.

Appellee's employment is "property" and his freedom to practice his chosen profession is "liberty". "The right to hold specific private employment and to follow a chosen profession free from unreasonable governmental interference comes within the 'liberty' and 'property' concepts of" the Constitution. *Greene* v. *McElroy*, 360 U.S. 474, 79 S. Ct. 1400, 1411.

The Fourteenth Amendment provides:

> * * * "No state shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any state deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws."

A regulation which has the effect of denying or unreasonably curtailing the common right to engage in a lawful business such as that under review cannot be upheld consistent with the Fourteenth Amendment. "Under that amendment, nothing is more clearly settled than that it is beyond the power of the state, 'under the guise of protecting the public, arbitrarily to interfere with private business or

prohibit lawful occupations *or impose unreasonable and unnecessary restrictions upon them'*". *New State Ice Co.* v. *Liebmann*, 285 U.S. 262, 278, 52 S. Ct. 371, 374. (Emphasis supplied). Similar expressions may be found in *Jay Burns Baking Co.* v. *Bryan*, 264 U.S. 504, 44 S. Ct. 412, 413; *Weaver* v. *Palmer Bros. Co.*, 270 U.S. 402, 46 S. Ct. 320, 323; *Louis P. Liggett* v. *Baldridge*, 278 U.S. 105, 49 S. Ct. 47, 49.

The police power of the State must be exercised for an end which is in fact public and "the means adopted must be reasonably adapted to the accomplishment of that end and must not be arbitrary or oppressive." *Treigle* v. *Acme Homestead Association*, 297 U.S. 189, 52 S. Ct. 408, 411.

We fail to see the justification for extended argument on Appellants' attempt to upset a ruling compelled by these principles which was the same conclusion reached by the Pennsylvania Court dealing with substantially the same statute. There are no contrary decisions involving substantially identical statutes.

The Pennsylvania court in the Commonwealth case predicated its decision to some extent upon the case of *Adams* v. *Tanner*, 244 U.S. 590, 37 S. Ct. 662, which decision was endorsed and applied to strike down another Kansas legislative enactment by the Kansas Supreme Court as late as May 14, 1960, in *Gilbert* v. *Matthews*, 186 Kan. 672, 676, 352 P.2d 58; there the court said:

> "The right to regulate and license the business does not however include the right to prohibit it directly or in effect, to adopt unreasonable and unfa r regulations, or such regulations as would be oppressive or highly injurious to the business."

At Page 681 the Kansas Supreme Court cited with approval *Adams* v. *Tanner*, and stated in striking down an

unreasonable regulation consisting of an act affecting the auction business that:

> "Abuses may, and probably do, grow up in connection with the auction business and are *adequate reason for regulation, but this is not enough to justify destruction of one's right to follow a distinctly useful calling in an upright way.*" (Emphasis supplied).

The Equal Protection of the law required the Court below to apply the same test to this Kansas Legislation which has been uniformly applied to similar regulations by the Kansas Supreme Court.

One of the bases upon which Appellants now seek a reversal of the court below is a hypothetical postulate that plaintiff's business constitutes the practice of law and hence the enactment does not restrict the privilege or immunity of a citizen of the United States (Jurisdictional Statement, Page 10). Thus construed, the act fails to meet the minimum standards of the Kansas Constitution which requires that the subject of any Kansas legislative act "shall be clearly expressed in its title", Article II, Section 16, of the Kansas Constitution (Emphasis supplied).

The title to the Act here in question reads:

> "An Act concerning the *business* of debt adjusting; making certain acts unlawful and prescribing penalties therefor." (Emphasis supplied).

May we remind Appellants that the practice of law has always been regarded as a profession not a *business*.

There is nothing in the title which would advise anyone that it was concerned with the practice of law or that it was an act defining, in whole or in part, action constituting the unauthorized practice of law.

Therefore, if the act is "given the force and effect contended by the Appellant" it "clearly would be outside of and foreign to the title of the bill, thus rendering the act unconstitutional and void". (*Manor Baking* v. *City of Topeka*, 170 Kan. 292, 298. See also *Capitol Gas and Electric Co.* v. *Boynton*, 22 P.2d 958, 137 Kan. 717, 726; *State ex rel.* v. *Kerchner*, 182 Kan. 622, 625; *State ex rel.* v. *City of Wichita*, 335 P.2d 786, 184 Kan. 196).

Also, *School District, Joint No. 71*, v. *Throckmorton*, 189 Kan. 259, 260, ... P.2d ....., decided January 27, 1962, where the Supreme Court of Kansas said:

> "2. Section 29 of the act would seem to contain matter not covered in the title of the act since it appears that the unified school districts referred to in Section 29 are districts which are not organized 'by a vote of the people' as the title provides. Thus Article 2, Section 16 of the State Constitution would appear to be violated."

Certainly "due process" requires compliance with the minimum standards of the Kansas Constitution relating to legislative enactments. And is not this equally true where the questioned statute prescribes penalties and imprisonment for heretofore lawful acts?

Not only is the practice of law not mentioned in the title, but it is difficult to conceive what rationale would permit a legislature enacting a regulation of or enlarging a definition of, the practice of law to provide for a fine and imprisonment to a licensed attorney engaged exclusively in that act.

We respectfully submit that Senate Bill 366 was not intended as an enlargement of the definition of or a regulation of the practice of law, but a contrary determination is fatal to its alleged validity because of the constitutional

defect in the title, which obviously obscured the purpose and substance of the act as now contended for by appellants.

A Federal Court acquiring jurisdiction because a federal question is involved, may decide non-federal questions which result in the statute being declared unconstitutional. Resort to a federal court may be had without first exhausting the judicial remedies of state courts. *Lane* v. *Wilson*, 307 U.S. 268, 59 S. Ct. 872, 875; *Bacon* v. *Rutland R.R.*, 232 U.S. 134, 34 S. Ct. 283, 58 L. Ed. 538; *Pacific Tel. & Tel. Co.* v. *Kuykendall*, 265 U.S. 196, 44 S. Ct. 553, 68 L. Ed. 975; *Silver* v. *Louisville & N. R. Co.*, 213 U.S. 175, 29 S. Ct. 451, 455.

Appellee pointed out to the court below the numerous situations where one citizen relies upon another or a firm or establishment to do that which, under the provision of this act, Senate Bill 366, is forbidden as "debt adjusting" and is asserted to be a crime. For example, an ordinary business man hiring a professional accountant could not make an agreement with the accountant whereby the facilities of the accountant's office could be used to pay or distribute the business man's money to obligations or accounts through the facilities of the accountant's office out of funds periodically furnished by the business man. The depositor in a bank could not give written authority to the bank to pay out on drafts drawn by the depositor's specified creditors, periodic payments for such items as insurance premiums, rental payments and mortgage and car payments which the bank would deduct from the depositor's account for a charge. The typical escrow contract agreement calling for periodic payments through an escrow agent to two or more creditors are forbidden by the act, where, for example, the creditors would be a mortgagee and the seller who is carrying back a portion of the balance of the purchase price. While forbidding such lawful business prac-

tices and activities, the act, however, leaves free small loan companies to make debt consolidation loans for 36% interest to an embarrassed debtor and does not prevent such a loan company from distributing the proceeds of the loan to specified creditors. Neither does it forbid or regulate the giving of financial advice or advising for a consideration concerning a budget plan. What is forbidden is the making of a contract providing for an agent's periodic distribution of a principal's money to persons specified by the principal.

We respectfully submit that the majority of the court below correctly determined that the distribution of a principal's money to specified creditors periodically is a lawful business subject to reasonable regulation but not prohibition and is not the practice of law.

That Appellants contend (Jurisdictional Statement, Page 7) that "the issues involved in this appeal are similar, if not identical, with those raised in various state courts" and cite *Home Budget Service* v. *Boston Bar Association*, 335 Mass. 228, 139 N.E. 387 and *American Budget Corportation* v. *Furman*, 67 N.J. Super. 134, 170 A.2d 63. These two cases did not involve statutes substantially identical to the one in question here and the resulting conclusions of those courts thus do not directly conflict with the decision below.

Apparently neither the Massachusetts nor the New Jersey act violated the respective state constitutions with respect to the title or otherwise. With respect to the New Jersey case, the majority opinion below pointed out: "It is sufficient to say that it differed in many particulars from the Pennsylvania case and the act which we have before us here."

The only question decided by the Massachusetts case was the power of the legislature to pass an act enlarging

by statute the definition of what constitutes the practice of law and providing a penalty for such defined act constituting the unauthorized practice of law; and the act was so designated. There the statute specifically provided that certain acts (including elements not in the Kansas act) "shall be deemed to be the practice of law".

Appellee does not here contend that it is beyond the power of the State Legislature to define the practice of law —that is not here involved. We merely assert that any act of the Legislature that violates the Kansas Constitution is not enforceable against a citizen when it deprives him of a right otherwise available to him, thus depriving him of property without due process of law.

The unsubstantial nature of appellants' contentions can also be illustrated by the jurisdictional statement, Page 7:

> "Treatment and comment in other jurisdictions on the problem of debt adjusting is to be considered in weighing the *reasonableness* and appropriateness of the action taken by the Kansas Legislature". (Emphasis supplied).

If so, consideration of the Oklahoma statute concerning this subject matter discloses that it makes a lawyer a criminal who engages in the act of debt pooling and exempts only retail merchants trade associations and non-profit organizations formed to collect accounts and exchange credit information (Okla. Stat. Ann., Tit. 24, Secs. 15-18).

Appellants make reference in their jurisdictional statement to such eminent legal publications as Good Housekeeping and Reader's Digest to attempt to discredit Appellee's business. But they have consistently failed to relate the Kansas Act to any claimed abuses in this State by Appellee or anyone else or to show how merely forbidding the periodic distribution of money by the "debt adjuster" will

rid the state of claimed abuses in rendering legal advice and compromising indebtedness (which Appellee testified, without contradiction, he did not do) and concerning which the act is silent.

It is to be noted that the Appellant Attorney General in the trial court did not choose to present oral argument or submit formal briefs on the merits of the case but limited actual argument to his contention that he was not a proper party defendant. That issue was listed as a question in the Notice of Appeal (Paragraph III G) but is not included in the "Questions Presented" in the Jurisdictional Statement and hence will not be considered by this Court. Rule 15 (c) (1).

Another illustration of the unsubstantial character of appellants' contentions is illustrated by the jurisdictional statement, Page 3, Questions Presented No. 4: "* * * By judicial act the Supreme Court of Kansas, as long ago as 1945, declared the business of so-called debt adjusting to be the unauthorized practice of law", citing *Depew* v. *Wichita Association of Credit Men,* 142 Kan. 403, 49 P.2d 1041. A portion of that opinion is quoted (Page 12—Jurisdictional Statement) *"the liquidation of a business* by this method, contracts and *forms used and the advice given* are services which require legal skill and knowledge and constitutes the practice of law", 142 Kan. 410, 49 P.2d 1045 (Emphasis supplied). Obviously the definition of debt adjusting contained in the act in question, does not in any way encompass the elements concluded by that decision to constitute the practice of law. The distinction is consistent with the fact that when a debt adjusting bill was proposed in New York, a committee of the New York City Bar disapproved, saying: "Basically, the subject lies outside the traditional concept of the practice of law." Bulletin No. 3 of the Association of the Bar of the City of New York, p. 89, February 13, 1956.

The Appellants criticize the Pennsylvania opinion in *Commonwealth* v. *Stone*, *supra*, because it cited *Adams* v. *Tanner*, 244 U.S. 590, with approval. It is not necessary to rely on *Adams* v. *Tanner* to summarily affirm the decision below, because the act in question blatantly fails to meet the minimum standards of the Kansas Constitution and thus a Nebraska citizen is deprived of property without due process and is denied the equal protection of the laws.

A general review of the decisions of this court in the field of due process discloses that the case of *Adams* v. *Tanner* has never been overruled. Later cases have restricted the application of the rule to cases where a clear showing can be made that a statute in effect prohibits an otherwise lawful business or attempts to regulate that business in an unreasonable, arbitrary or oppressive manner. This is consistent with the conclusions of the Court below and extended analysis of the cases would seem pointless.

As we have previously pointed out, however, the Kansas Supreme Court, as late as May 14, 1960, cited *Adams* v. *Tanner* with approval and declared unconstitutional a Kansas statute failing to meet the test contained in the *Adams* case. *Gilbert* v. *Matthews*, *supra*, 186 Kan. 672, 352 P.2d 58. Appellants apparently would like to have a different test applied to this Kansas statute when challenged by Appellee, a Nebraska resident. Obviously, this Court does not have to agree with the Kansas Supreme Court in matters involving the Federal Constitution, but the contended-for inconsistency in determining the validity of Kansas statutes illustrates the lack of any compelling reason for this Court to hear extended argument aimed at a reversal of a judicial determination consistent with the test so recently held to be applicable to Kansas statutes by the highest Court of that State whose enactment is here involved.

We respectfully submit that the decision below is correct and should be affirmed without further argument.

Respectfully submitted,

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SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1962.

No. 111.

WILLIAM M. FERGUSON, Attorney General of the State of Kansas, and KEITH SANBORN, County Attorney of Sedgwick County, Kansas,
Appellants,

vs.

FRANK C. SKRUPA, Doing Business As Credit Advisors,
Appellee.

APPEAL FROM THE UNITED STATES DISTRICT COURT FOR THE DISTRICT OF KANSAS.

BRIEF OF WILLIAM M. FERGUSON, ATTORNEY GENERAL OF THE STATE OF KANSAS.

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SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1962.

No. 111.

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Appellants,

vs.

FRANK C. SKRUPA, Doing Business As Credit Advisors,
Appellee.

APPEAL FROM THE UNITED STATES DISTRICT COURT FOR THE DISTRICT OF KANSAS.

BRIEF OF WILLIAM M. FERGUSON, ATTORNEY GENERAL OF THE STATE OF KANSAS.

NATURE OF CASE.

This is an appeal from the judgment and orders of a three-judge court sitting in the District of Kansas (Huxman, Circuit Judge, Retired, and Hill and Stanley, District Judges), rendered November 27, 1961 (210 F. Supp. 200). Said judgment declared the Kansas Debt Adjust-

ment Law (Session Laws of 1961, Ch. 190, Appendix A), to be in violation of the due process clause of the Fourteenth Amendment to the Federal Constitution, and enjoined the County Attorney of Sedgwick County, Kansas, and the Attorney General of Kansas from enforcing this law.

JURISDICTION.

The three-judge court which tried the case was duly convened in accordance with U.S.C., Title 28, Secs. 2281 and 2284 (R. 43). The present appeal is taken under U.S.C., Title 28, Sec. 1253.

STATUTES INVOLVED.

The Kansas Debt Adjustment Act, Session Laws of 1961, Ch. 190 (sometimes referred to as Senate Bill 366, 1961 Session), is shown at Appendix A. It is also now printed as G.S., 1961 Supp., Sec. 21-2464.

STATEMENT.

Frank C. Skrupa, a resident of Nebraska, commenced this action June 27, 1961 (R. 1), in the United States District Court for the District of Kansas, to enjoin Keith Sanborn, the County Attorney of Sedgwick County, Kansas, and William M. Ferguson, Attorney General of the State of Kansas, from enforcing the Kansas Debt Adjustment Act. Plaintiff contended that said act is invalid in that by its terms and enforcement he would be deprived of his property and rights, he would be denied equal protection of the laws, and that the obligations of his contracts would thereby be impaired. He also contended that

said act violated Article II, Section 16 of the Kansas Constitution, in that the subject of said act is not clearly expressed in the title of the act. By his second cause of action, plaintiff alleged existence of an actual controversy between the parties with regard to said act and asked for a declaratory judgment that said act was invalid and that defendants have no right to enforce the same (R. 6).

On June 28, 1961, a hearing was held before Hon. Delmas C. Hill on plaintiff's application for a temporary restraining order. At this hearing evidence was introduced (R. 7) and the temporary injunction was granted (R. 41). Trial on the merits took place August 17, 1961 (R. 57), before a three-judge court, consisting of Hon. Walter A. Huxman, Circuit Judge, retired, and Hon. Delmas C. Hill, Circuit Judge, and Hon. Arthur J. Stanley, District Judge. A transcript of the evidence received at the hearing on June 28, 1961, of plaintiff's application for a temporary injunction was made part of the record in the trial on the merits (R. 63, 64).

The evidence in the case shows that under the name of Credit Advisors the appellee Skrupa has, since the spring of 1960, conducted a business at Wichita, Kansas, which he admits comes within the definition of "debt adjusting" as defined in L. 1961, Ch. 190, Sec. 1 (R. 10, 75). That neither Skrupa nor any of his employees is an attorney (R. 13), and that they do not give legal advice (R. 13, 82). That the service rendered is budget planning and financial management for persons burdened with indebtedness. That he advertises his business in the local newspapers (R. 23) and has spent considerable sums in establishing and promoting his business. That in return for his services the client agrees to pay Credit Advisors a fee (Ex. E, 20, 121) the amount of which depends on the total amount of the indebtedness of the client and the estimated

amount of work involved. That such fees usually run anywhere from 5% to 9% of the client's total debts (R. 16).

When a client enlists the help of Credit Advisors, he is first required to submit a list of all his indebtedness, and to state his income and total resources (R. 13, Ex. D. R. 20, 119). Credit Advisors then works out a plan whereby the client agrees to pay to it periodic payments according to his ability to pay. Credit Advisors then endeavors to persuade the clients' creditors to co-operate with the plan (R. 16) and to accept partial payments on their claims, as the client makes his payments to Credit Advisors and as it distributes such payments to the creditors. If a creditor refuses to co-operate, he is ignored in the distribution of payments by Credit Advisors, and the client is told to make his own arrangements with such creditor (R. 95). Appellee Skrupa testified that Credit Advisors does not advise clients as to their legal rights or their liability for any indebtedness, nor as to any steps such clients should take to protect their rights (R. 13).

That said county attorney has threatened to enforce said statute against Skrupa's business (R. 11) and that because thereof business has been frightened away from Credit Advisors, and that if defendants are not enjoined from enforcing said statute, Skrupa will be compelled to close his business and will be unable to perform his outstanding contracts (R. 11, 12).

The case was argued and briefs were submitted by the parties. Thereafter, on November 27, 1961, the court rendered judgment (R. 126, 128, 133) [Judge Stanley dissenting (R. 131)], holding that the Kansas debt adjustment act violates appellee's rights guaranteed to him by the due process clause of the Fourteenth Amendment to

the Federal Constitution, and enjoining defendants and all persons acting in their behalf from filing any complaints against appellee and his agents for alleged violations of said statute, or in any way attempting to enforce said statute against them.

QUESTIONS PRESENTED.

1. Whether L. 1961, Ch. 190, is a legitimate exercise of the police power of the State of Kansas.

2. Whether said statute is invalid because of a defect in the title of said act.

SUMMARY OF ARGUMENT.

I. The Kansas Debt Adjustment Statute Is a Valid Exercise of the State's Police Power.

1. Duly enacted statutes are presumed to be valid, and the burden is upon the person asserting invalidity to clearly show that the statute invades his constitutional rights. Of two possible interpretations, that one which will sustain the statute must be adopted.

2. The police power of the state may be exercised not only to protect not only the public health, morals and safety, but also the well being and tranquility of the people. The police power therefore extends to the prevention of deception, fraud and imposition.

In exercising its police powers the legislature has broad discretion, but its enactments must not be so arbitrary and unreasonable as to violate the due process and equal protection provisions of the 14th Amendment.

If the evil at which the statute is aimed has a reasonable relation to the public welfare, and if the remedy

which the statute prescribes reasonably adapted to accomplish the end sought, the statute is not arbitrary or unreasonable.

3. The legislature had grounds for believing that the business of debt adjustment was inimical to the public welfare.

(a) The existence of such evil must be assumed if, within reason, any state of facts can be conceived which would support the statute. However, because of the great increase of installment buying in recent years, many persons have obligated themselves beyond their ability to pay, and in consequence are in distress financially. Lacking ability to solve their own problems, they eagerly accept the debt adjuster's promises of relief from debt worries.

(b) Fifteen other states had already legislated against debt adjustment.

(c) The Supreme Judicial Court of Massachusetts had held the statute of that state valid (*Home Budget Service* v. *Boston Bar Assn.*, 139 N.E.2d 387). That opinion describes the methods employed by the debt adjuster in substantially the same manner as is shown by the evidence in this case.

On the other hand the Pennsylvania law which is practically the same as the Kansas statute was held unconstitutional in that state (*Comm.* v. *Stone*, 191 Super. 117, 155 Atl. 453). For the reasons set out in the brief, that case is not controlling. By adopting the Pennsylvania statute, the Kansas court did not adopt the construction placed on the Pennsylvania statute by the superior court of that state.

(d) Numerous articles critical of debt adjusting had been published in legal journals, nationally circulated magazines, newspapers and other published material.

(e) Notwithstanding their broad representations, Credit Advisors does not supply the services they promise to give either to debtors or to creditors.

(f) In serving their clients, debt adjusters engage in the unauthorized practice of law.

4. In view of all the circumstances the Kansas legislature had sufficient ground to consider debt adjusting an evil which needed to be curbed.

5. The remedy provided by the Kansas statute was reasonably adapted to protect the public against the evils of debt adjusting. The Kansas statute is regulatory, rather than prohibitory. It does not prohibit debt adjusting where that service is rendered gratuitously, and it expressly permits debt adjusting when performed by an attorney incidentally in the practice of his profession. Debt adjusting inevitably involves legal problems and only trained lawyers can give debtors the help they need.

II. The Title of the Kansas Act Complies with Constitutional Requirements.

The title is broad, relating to the business of debt adjusting, making certain acts unlawful and prescribing penalties. All of the text of the statute is comprehended by these broad terms and complies with Art. 2, Sec. 16 of the Kansas Constitution.

ARGUMENT.

I. The Statute in Question Is a Valid Exercise of the State's Police Power.

Consideration of the constitutionality of a duly enacted statute must begin with the presumption of its validity (*Alaska Packers* v. *Industrial Accident Commission*, 294 U.S. 532, 543, 79 L. Ed. 1044, 1049; *Mo. Pac.* v. *Norwood*, 283 U.S. 249, 254, 75 L. Ed. 1010, 1016). While this presumption is rebuttable, every possible presumption is in favor of validity until overcome by a rational doubt (*Adkins* v. *Children's Hospital*, 261 U.S. 525, 544, 67 L. Ed. 785, 790, 43 S. Ct. 394, 24 A.L.R. 1238). The burden therefore rests upon the appellee Skrupa to establish with convincing clarity that the statute infringes upon his constitutional rights (*Corporation Commission* v. *Lowe*, 281 U.S. 431, 438, 74 L.Ed. 945, 949; *Toombs* v. *Bank*, 281 U.S. 643, 647, 74 L. Ed. 1088, 1090). Absent such showing, the presumption of constitutionality must prevail (*O'Gorman & Young* v. *Insurance Co.*, 282 U.S. 251, 75 L. Ed. 324, 51 S. Ct. 130, 72 A.L.R. 1163). And as between two possible interpretations, by one of which it would be unconstitutional and the other valid, it is the court's duty to adopt that which will save the act (*N.L.R.B.* v. *Jones & Laughlin Steel Co.*, 301 U.S. 1, 30, 81 L. Ed. 893, 908, 57 S. Ct. 615, 108 A.L.R. 1352).

The statute in question was enacted under the police power of the state. That power extends beyond protection of the public health, morals and safety and includes within constitutional limitations, power to protect the well being and tranquility of the public (*Kovacs* v. *Cooper*, 336 U.S. 77, 83, 93 L. Ed. 513, 520). This authority of the state to

enact laws reasonably deemed necessary to promote the health, safety and general welfare of the people carries with it a wide range of discretion as to what matters are of sufficiently general importance to be subjected to state regulation (*Mountain Timber Co.* v. *Washington*, 243 U.S. 219, 238, 61 L. Ed. 685, 696, 37 S. Ct. 260). The prevention of deception, fraud and imposition is therefore a field in which the police power may be exercised (*Hall* v. *Geiger-Jones Co.*, 242 U.S. 539, 551, 61 L. Ed. 480, 489).

But whatever the legislature may have done in enacting laws to promote and protect the public welfare, such legislation must be within constitutional limits. The courts are not concerned with the wisdom of such legislation (*Williamson* v. *Lee Optical*, 348 U.S. 483, 99 L. Ed. 563, 75 S. Ct. 461), but they are concerned with the question whether such statutes are arbitrary and unreasonable to the extent that they contravene the due process and equal protection clauses of the 14th Amendment to the Federal Constitution. That the statute in question violates these constitutional provisions, was the holding of the court below:

> "The Fifth Amendment, in the field of federal activity, and the Fourteenth as respects state action, do not prohibit governmental regulation for the public welfare. They merely condition the exertion of the admitted power, by securing that the end shall be accomplished by methods consistent with due process. And the guaranty of due process, as has often been held, demands only that the law shall not be unreasonable, arbitrary or capricious, and that the means selected shall have a real and substantial relation to the object sought to be attained. It results that a regulation valid for one sort of business, or in given circumstances, may be invalid for another sort, or for the same business under other circumstances, because

> the reasonableness of each regulation depends upon the relevant facts."
>
> (*Nebbia* v. *New York*, 291 U.S. 502, 525, 78 L. Ed. 940, 950, 89 A.L.R. 1469, 1476.)

Hence, in determining whether a statute ostensibly enacted under the police power violates the constitutional limitations, the rule of reason must be applied to the facts of a particular situation (*Chicago Mercantile Exchange* v. *Tieken*, 178 F. Supp. 779, 785).

At the trial of this case appellee contended that the Kansas statute was unreasonable and violated his rights granted by the 14th Amendment; and the lower court so held. That is the question now before this Court, and its answer depends on two factors: whether the evil sought to be remedied bears a reasonable relation to the public welfare; and, whether the remedy provided is reasonably adapted to accomplish the end sought.

As to the existence of an evil justifying action by the legislature, if any state of facts reasonably can be conceived that would sustain the statute, the existence of that state of facts at the time the law was enacted must be assumed (*Lindsley* v. *Natural Carbonic Gas Co.*, 220 U.S. 61, 79, 55 L. Ed. 369, 377; *Morey* v. *Doud*, 354 U.S. 457, 1 L. Ed. 2d 1485, 1491, 77 S. Ct. 1344). As shown by the history of the past fifteen years, the situation here needs not rest upon a mere assumption. During the period of abundant employment, increased wages and higher standards of living, plus the freedom with which credit has been extended to persons of moderate means, installment buying has increased many fold. In consequence many wage earners, and others as well, have contracted obligations in excess of their ability to pay. Burdened by their debts and pursued by their creditors, many debtors feel

themselves hopelessly involved. It is to these persons that the business of the debt adjuster or budget planner has a special appeal.

Aiding those in financial distress is a praiseworthy objective, but the evil at which the statute in question was directed is not the fact of assistance, but the methods pursued by the debt adjusters and the results which have followed their efforts. That the debt adjusting business does not function in such manner as to merit unqualified approval is apparent from the fact that between 1947 and the passage of the Kansas statute in 1961, no less than fifteen states enacted laws restricting the business of debt adjusting in some manner. A list of such statutes is shown at Appendix B. It is not without significance that so many of our states have felt the need for some such legislation.

The Kansas act follows the Pennsylvania statute closely, except in the name applied to the business, which is called "Budget planning" in the Pennsylvania law. However, in 1959, the Pennsylvania statute was declared unconstitutional in *Commonwealth* v. *Stone*, 191 Super. 117. 155 Atl. 453. The majority opinion of the court below relies strongly upon the Stone case, even stating, "we are in full accord with the reasoning and philosophy of the Pennsylvania court." (R. 129).

The *Stone* case is not entitled to the weight given it in the majority opinion in the present case. In the first place it is not the decision of the court of last resort in Pennsylvania. The fact is that it is the decision of the Superior Court, which is a court of intermediate appeals, from whose decisions on constitutional questions an appeal may be taken to the Supreme Court of that state (See Purdon, Penna. Statutes Annotated, Title 17, *Courts* Secs. 111, 190).

Furthermore, *Commonwealth* v. *Stone* was a criminal case in which stricter construction of the statute was required than is necessary in the present civil case. That case was an appeal from the order of the Quarter Sessions Court quashing the indictment, and the Superior Court had no evidence before it disclosing the nature and methods of the business of "budget planning." Hence, there was no evidential basis for the declaration of the Superior Court that budget planning was a legitimate business.

Furthermore, the opinion in *Stone* relies on *Adams* v. *Tanner*, 244 U.S. 590, 37 S. Ct. 662, 61 L. Ed. 1336, which involved a Washington statute forbidding employment agents to demand or receive a fee from a person seeking employment. It was held that this law was invalid in that it infringed upon the constitutional right of a citizen to engage in a useful and lawful business. This may have been considered good law in 1917 when that case was decided, but the trend of judicial opinion since then has been to the contrary. The dissenting opinion of Judge Stanley in the court below (R. 133), refers to the comment of Judge Augustus N. Hand in *Staten Island Loaders, Inc.*, v. *Waterfront Commission*, 117 F. Supp. 308, 311, pointing out this change of judicial thinking; but as early as 1931 Judge Hand had sounded a warning note in *National Employment Exchange* v. *Geraghty*, 60 F.2d 918, 921, as follows:

> "The powerful dissents in *Adams* v. *Tanner*, *Tyson* v. *Blanton* and *Ribnik* v. *McBride*, and the narrow margin by which the views of the majority prevailed, warn us that the doctrines of those cases are not likely to extend beyond the precise facts presented."

The accuracy of Judge Hand's prediction is evident by the statement of this court in *Lincoln Federal Labor*

Union, A.F.L., v. Northwestern Iron and Metal Co., 335 U.S. 525, 93 L. Ed. 212, 220, 6 A.L.R. 2d 473:

> "The Allgeyer-Lochner-Adair Coppage constitutional doctrine was for some years followed by this court. It was used to strike down laws fixing minimum wages and maximum hours in employment, laws fixing prices, and laws regulating business activities. (Citation) and the same constitutional philosophy was faithfully adhered to in *Adams* v. *Tanner*, 244 U.S. 590, 61 L. Ed. 1336, 37 S. Ct. 662, L.R.A. 1917 F, 1163, Ann. Cas. 1917 D, 973, a case strongly pressed upon us by Appellants. In *Adams* v. *Tanner*, this court with four justices dissenting struck down a state law absolutely prohibiting maintenance of private employment agencies. The majority found that such businesses were highly beneficial to the public and upon this conclusion held that the state was without power to proscribe them. Our holding and opinion in *Olsen* v. *Nebraska*, 313 U.S. 236, 85 L. Ed. 1305, 61 S. Ct. 862, 133 A.L.R. 1500, supra, clearly undermined *Adams* v. *Tanner*."

The changed constitutional climate is further evidenced by what this Court said in *Williamson* v. *Lee Optical*, 348 U.S. 483, 488, 99 L. Ed. 563, 572:

> "The day is gone when this Court uses the Due Process Clause of the Fourteenth Amendment to strike down state laws regulatory of business and industrial conditions because they may be unwise, improvident or out of harmony with a particular school of thought."

Adams v. *Tanner* does not present a very substantial basis for either *Comm.* v. *Stone* or for the conclusion reached by the trial court in the present case.

Even though the decision in *Comm.* v. *Stone* preceded enactment of the Kansas statute, the Kansas legislature did not, by using the language of the Pennsylvania statute,

adopt the conclusion of the Pennsylvania Court with reference to the Pennsylvania statute. The rule of adoption of the construction placed on a statute by the courts of the state of origin is not an absolute rule to be followed under all circumstances (*Whitney* v. *Fox*, 166 U.S. 637, 647, 41 L. Ed. 1145, 1149). Its application depends on a presumption of legislative intent varying in strength with the similarity of the language and the character of the decisions in the state of origin (*Carolene Products Co.* v. *U.S.*, 323 U.S. 18, 26, 89 L. Ed. 15, 21, 155 A.L.R. 1371, 1380). In *State* v. *Campbell*, 73 Kan. 688, 703, 85 Pac. 784, it was said that there are exceptions to the general rule of adoption, and that it is not an absolute rule that where the courts of several states have construed substantially the same statutes differently, and the construction placed upon it by the state from which it was adopted is opposed to the weight of reason and authority, or against the general policy of our laws, such construction will not be followed.

As a matter of fact, the rule of adoption is a rule of construction to be used only where the meaning of the statutory language is uncertain, and is not applicable where the question is whether the statute is valid or not (*Reno* v. *Second Judicial District*, 59 Nev. 416, 95 P.2d 994, 125 A.L.R. 948; *Boyd* v. *Lumber Co.*, 119 Va. 348, 89 S.E. 273, 275, L.R.A. 1917A, 94, 96; *Re McKennan*, 25 S.D. 361, 127 N.W. 611, 33 L.R.A. (N.S.) 606, 618.

Returning to the subject of the existence of an evil which needed legislative intervention from 1955 on, there were abundant articles in various periodicals dealing with debt adjusting. Some of these were in professional publications such as the Personal Finance Law Quarterly Report, four articles; the Unauthorized Practice News, a publication of the American Bar Association, four articles; and The Legal Aid Brief Case, which is the publication of the

Legal Aid Association. Other similar articles appeared in popular magazines such as the Readers Digest and Good Housekeeping. Some publicity was also given to a "Statement on Debt Adjustment Business" by the Executive Council of the AFL-CIO, under date of February 21, 1961. And in September of that year an article on the subject was published in the AFL-CIO Federationist. A list of these various publications is shown at Appendix C.

Another source of information open to the Kansas legislature was the decision of the Supreme Judicial Court of Massachusetts in 1957, in *Home Budgeting Services* v. *Boston Bar Assn.*, 139 N.E.2d 387. That opinion states in considerable detail the methods used in the business of debt adjustment, there referred to as "debt pooling" (p. 389). As described in the above opinion, the methods of debt adjusters in Massachusetts were remarkably similar to those used by Credit Advisors as shown by the testimony of Mr. Skrupa.

The concern of the legislature with respect to the business of debt adjusting seems justified by the testimony of the appellee Skrupa, and the methods he uses to promote and conduct the operations of Credit Advisors.

Debt adjusters solicit business by advertisements designed to appeal to harassed debtors unversed in business matters and who lack the fortitude, ability and willingness to solve their own financial problems. One such advertisement (R. 23) begins with "Bills Pressing?" and suggests that by the intervention of Credit Advisors, all the debtor's indebtedness can be consolidated and arranged and paid by one low payment which the debtor can afford to pay. Emphasis is also laid upon the fact that no security and no co-signers are necessary to accomplish this result.

But solicitation by means of newspaper advertisement is not the only method debt adjusters use to attract clients. Defendant's Exhibit "C" (R. 20, 117) is a form of a letter which Credit Advisors send out to prospective clients.[1] The language in this letter is even less restrained than in the newspaper advertisements. Credit Advisors' method is said to be "a new and successful plan of consolidating debts, havng all the advantages of a consolidation loan without high interest, co-signers or the mortgaging of property; and making its office the one place to pay." The method is to budget the debtors' income and then Credit Advisors is to arrange a payment plan with the debtors' creditors by which retirement of the indebtedness will be accomplished through "a payment you can afford" and which Credit Advisors will distribute to the creditors "in such a way as to keep them satisfied."

This letter also points out the benefits to the debtor "if we receive regular payments from you." One benefit is promised which would have a strong appeal to many debtors in that the importunities of creditors will be diverted from the debtor to the debt adjuster. However, the benefit said to be most important is "you have peace of mind."

The first step in Credit Advisors program is that the debtor must furnish a list of all his creditors and the amounts due them on the form shown at Exhibit D (R. 20, 119). The purpose of this list is said in Exhibit C (R.

1. The index to the Transcript of Record describes Exhibit C as a "form of business letter to creditor explaining type of service." The language of Exhibit C—"You do not pay high rates of interest, nor do you need to mortgage property or have co-signers", etc.—shows clearly that it is a letter to a debtor who has requested information.

20, 117), to be to enable Credit Advisors to contact the creditors and to inform them that they will receive all payments from it, and that they are to contact the debt adjuster in the future. However, the list also serves as a basis for fixing Credit Advisors fee which is from 5% to 9% of the total indebtedness (R. 16), taking into consideration the estimated work involved (R. 98).

Apparently the debt adjuster makes no effort to verify the debtor's list of creditors or the amounts due them either by investigation of the public records or by inquiry elsewhere. "If a man comes to us and says he owes Jones $500, we assume he owes Jones $500." (R. 14, 30). In the regular course of business, examination of the public records is at least a necessity required by law and by prudence, and failure to exercise this reasonable caution is negligent conduct which the law penalizes. If the debt adjuster relies solely on the debtor's list of creditors, he falls short of rendering the client his best efforts.

Having listed his debts, the client then signs the document shown at Exhibit E (R. 20, 121). This instrument is styled "Agreement," but while it binds the debtor to everything, it does not obligate the debt adjuster to anything and is not even signed by the adjuster. In terms it appears to be an appointment of Credit Advisors as agent of the debtor "in arranging and making monthly payments to my creditors who are listed in my application." (R. 20, 121). As the result of this appointment a relationship of trust and confidence existed between the adjuster and the debtor But notwithstanding this fiduciary relationship, it is the creditor in whose favor the adjuster resolves every question; it is the creditor to whom the adjuster extends "a helping hand" (Exhibit A, R. 20, 115), and it is the creditor whose collection department is spared the task of making

the collection. In effect, the adjuster acts in the capacity of a bill collector, except that it is the debtor who pays the fee. In reality, it is the creditor who is the beneficiary of the adjuster's services. "No man can serve two masters."

In this instrument the debtor agrees to co-operate with Credit Advisors in the payment of these obligations. Next the debtor binds himself to furnish a list of his creditors, but it would seem that such list has preceded the "Agreement" in that the debt adjuster's total fee is stipulated in the third paragraph thereof and as has been stated above, the amount of the fee is fixed at some per cent of the total indebtedness (R. 16, 98).

The debtor also agrees to pay to Credit Advisors a stipulated sum per week or month until his present indebtedness, including the charges of Credit Advisors, is paid, but nothing is said as to how or when such fee is to be paid. The debtor also agrees that if he defaults in his payments, Credit Advisors may declare the contract terminated, and if so, the debtor promises to pay it the amount of $25.

The contract having been signed, Credit Advisors contacts the creditors listed and endeavors to persuade them to co-operate with the plan. In these negotiations, no attempt is made to reduce the amount claimed by the creditor. In the case of fixed payments, "we just assume that that is the amount the payment is going to be" (R. 16). "We negotiate to the extent that we say 'You will receive so much a month until the debt is paid in as long as this man is paying us regularly', according to the terms of our contract." (R. 14, 15). However, occasionally an effort is made to reduce the amount of the periodic payments due the creditor.

But what about the creditor who refuses to co-operate with the plan? Mr. Skrupa testified, "If they don't, why there is nothing we can do." (R. 16). "We merely tell the debtor to make some arrangements on his own, to go over there and try to straighten it out." (R. 95). We submit that this is cold comfort for the debtor who has looked to the debt adjuster for relief from worry over debt. So far as this particular indebtedness is concerned, the debtor has gained nothing by his relationship with the debt adjuster except that his indebtedness has been increased by the amount of the fee he has promised to pay.

The debtor having made a payment into the debt adjuster's hands, the latter owes a duty to both the debtor and the creditors to disburse the payment in accordance with the plan. As to the creditors, Credit Advisors sends to each of them the letter shown at defendant's Exhibit A (R. 20, 115). By its terms the creditor is advised that all the debtor's income over and above reasonable needs for living expenses, "is directed to us to pay his creditors." The letter describes Credit Advisors' position by saying "We function merely as a helping hand," and points out that their service "relieves some of the burden from your own collection departments." Creditors also receive from the debtor the letter shown at defendant's Exhibit B (R. 20, 116). This letter appeals for co-operation by the creditor with Credit Advisor's plan and states, "This will enable all of our creditors to receive their share of our income monthly until such time as our indebtedness may be refinanced or liquidated."

As heretofore stated, while the "Agreement," (Exhibit E, R. 20, 121) specifies the total compensation Credit Adjusters is to receive, nowhere is the time or manner of payment stated. The evidence shows, however, that Credit Advisors deducts varying amounts from each payment

made by the debtor as a credit on its fee. The record shows what was done in this respect in four cases handled by Credit Advisors.

In the Nickerson case (R. 102, 103) the total indebtedness was $1,972.00 and the fee was set at $165.00. The debtor made but one payment, amounting to $70.00. Out of this payment Credit Advisors deducted 11.4% or $7.98 for credit on its fee and paid the balance $62.02 to Commercial Credit Corporation. It seems likely that there were other creditors who received nothing, but the record does not show the names of the creditors. Three weeks later the debtor went into bankruptcy.

In the Phillips case (R. 104), the total indebtedness was $3,153.00, and the fee was fixed at $275.00. Phillips made payments of: $50, of which $7 or 14% was credited to the fee; $15, of which $2, or 13.3%, was credited to the fee; $25, of which $5, or 20%, was credited to the fee; $75, of which $7, or 9.3%, was credited to fee; and $50, of which $9, or 18%, was credited to the fee. In all Phillips paid in $215.00, $30 being applied to the fee. Phillips also went into bankruptcy.

In the Farnum case (R. 104) the total indebtedness was $2,200.00 and the total fee was fixed at $150. The Farnums made only one payment, amounting to $21.00. Of this amount $19.00 was paid to creditors, and $2, or 9.5%, was credited on the fee. Shortly after making this one payment, the Farnums were garnisheed and made no further payments to Credit Advisors.

In the Epperson case (R. 105) the debts totaled $500 and the fee was fixed at $50. The debtors paid in six payments of $20 each, or $120. Credit Advisors disbursed $50 to one creditor and $40 to another, retaining as their fee $30 or 25%.

The evidence does not show how many creditors were listed in the above cases, nor the amounts due to each, nor any payments to creditors except as above stated, but it may be doubted whether the distributions made by Credit Advisors in the above mentioned cases were made on a fair pro rata basis as it was represented would be done in Exhibit A (R. 20, 115) and B (R. 20, 116). So far as the record goes there is nothing to show that when solicited to co-operate with the plan the creditors were informed that so large a proportion of the payments made would be diverted to payment of the fees before they received anything on their claims. Nor does it appear that the debtors were informed that each payment made by them did not reduce their indebtedness by the full amount paid in by them, and that payments to creditors would be reduced by the amounts retained by Credit Advisors. Perhaps it is not strange that, as Mr. Skrupa testified (R. 106) only a very small percentage of his clients go all the way through with Credit Advisors plan.

The testimony of Mr. Skrupa supplies some evidence of unfairness in the distribution of the debtor's payments. This is indicated by the fact that in the Nickerson case above mentioned, only one creditor received anything, and that in the Epperson case only an attorney and an acceptance company were paid anything.

As an inducement to secure the co-operation of creditors in the plan, they were told, "You will receive so much a month until the debt is paid in as long as the man is paying us regularly." (R. 14, 15). But on the same page, in discussing distribution to creditors, the following appears:

> "Q. And then do you govern the amount of payment which you negotiate or attempt to negotiate with each individual creditor on that list by the type of claim it is and whatever, how consistent the particular credi-

tor is, and whatever you can to try to make his payments cover all the money?

A. We try to fit the bills within the man's income.

. . .

Q. And does it also depend upon the extent of pressure exerted for payment by that particular creditor?

A. We try to satisfy the creditor.

Q. So the answer would be 'Yes, it does', would it not, sir?

A. Yes, sir."

Again, in disbursing the money paid to it by the debtor, a listed creditor who refuses to co-operate with the plan is ignored in the distribution. Credit Advisors does not tender this share to such creditor for credit on the debt, nor is this sum set aside and held for such creditors' use. Instead, Credit Advisors distributes this share among the co-operating creditors (95), who by this means are accorded a preference over other known creditors.

But there is another phase of Credit Advisors' dealings which must be considered. Neither Mr. Skrupa nor any of his employees is an attorney (R. 13, 82). They profess to be interested only in the debt problems of their clients, and not in their legal problems (R. 82), and, so they say, are not engaged in giving any opinions of a legal nature (R. 13). But "debt", "debtor" and "creditor" are legal terms, signifying legal relationships, and clothing the parties with legal rights and duties. It is difficult to see how a debt adjuster can function without being involved in questions of law inherent in business problems.

In *Home Budget Service* v. *Boston Bar Association*, 139 N.E.2d 387, the Supreme Judicial Court of Massachusetts upheld the constitutionality of a statute of that state which declared that debt-pooling was to be deemed the

practice of law and forbidding persons whe were not a member of the bar from engaging in such business. The court said (p. 390) that the conduct of plaintiffs presents features of the practice of law and viewed as a whole amounted substantially to that. One similarity mentioned was the relationsihp of trust and confidence between the client and the debt pooler, which is not unlike that between the client and his attorney. The Court said further:

> "That the debt pooler neither enters the courtroom nor prepares legal documents does not save its conduct from classification as the practice of law. Nor is there escape in the fact that it does not advise as to the validity of claims; for quite to the contrary its omission to do so may be a surrender to some demands which a member of the bar perhaps ought to question and advise the debtor to contest."

This last statement is pertinent in the present case. When we consider that the debt adjuster's appeal is largely to those inexperienced in business ways and unable to fend for themselves; when we consider the debt adjusters somewhat extravagant promises, peace of mind and relief from debt worries for the distress; and when we consider Mr. Scrupa's testimony that credit advisors never consult an attorney in regard to the debtor's indebtedness and that it simply "goes along" with the demands of attorneys representing creditors (R. 14); that it assumes the correctness of fixed finance payments (R. 16), it never discusses wage earner's plans or bankruptcy (R. 21), and never considers whether the debt may be usurious (R. 30); it is clear that Credit Advisors falls short of giving its clients the help they have been led to believe they will get from the services of the debt adjuster.

In view of the restrictive statutes enacted by so many states; in view of what was said in *Home Budget Service* v.

Boston Bar Assn., 139 N.E.2d 387; in view of the numerous published articles charging debt adjusters with improper conduct; and in view of Credit Advisors' broad promises and faulty performance as disclosed by the evidence in this case, we feel constrained to say that the majority opinion in the court below erred in pronouncing debt adjusting to be a legitimate business. And in view of all the circumstances, we contend that the Kansas legislature had ample grounds for concluding that the public welfare required that the business of debt adjustment should be made subject to restrictive legislation.

But there is a further test which a statute, whose constitutionality is assailed, must pass. Not only must the evil sought to be remedied bear a reasonable relation to the public welfare, but the remedy provided must be reasonably adapted to accomplish the end sought.

The trial court held as a matter of law that the act in question was prohibitory and not regulatory; but even if construed as regulatory, that it is an unreasonable and unwarranted regulation of a lawful business and therefore in violation of the due process clause of the Fourteenth Amendment to the Federal Constitution (R. 128).

Assuming for the moment that the Kansas statute is prohibitive of a lawful business, we do not think that the broad rule can be laid down that the constifution forbids any prohibition of a lawful business.

> "The constitution does not secure to anyone liberty to conduct his business in such fashion as to inflict injury upon the public at large or upon any substantial group of the public." (*Nebbia* v. *New York*, 291 U.S. 502, 539, 78 L. Ed. 940, 958).
>
> "It is enough that there is an evil at hand for correction and that it might be thought that the partic-

ular legislative measure was a rational way to correct it." (*Williamson* v. *Lee Optical*, 348 U.S. 483, 488, 99 L. Ed. 563, 572, 75 S. Ct. 461).

"With the wisdom of the exercise of that judgment the court has no concern, and unless it clearly appears that the enactment has no substantial relation to a proper purpose, it cannot be said that the limit of legislative power has been transcended." (*Purity Extract & T. Co.* v. *Lynch*, 226 U.S. 192, 201, 57 L. Ed. 184, 187).

Hence, when the legislature has reason to believe that the public welfare requires it, even a legitimate occupation may be restricted or prohibited in the public interest (*Breard* v. *Alexandria*, 341 U.S. 622, 632-3, 95 L. Ed. 1233, 1243). Accordingly, it has been held that an innocent activity may be regulated or prohibited if its purpose frequently offers opportunity for fraud or deception (*McCanless* v. *State*, (Tenn.) 181 S.W.2d 154, 153 A.L.R. 832).

However we contend that the Kansas statute is not prohibitory, but is, in fact, regulatory. To prohibit means to forbid, to suppress, to prevent or stop altogether. It signifies an end to something, whereas to regulate implies continued existence in some restricted or limited manner. In the first place the statute in question does not apply to all debt adjustment, but only to such service as is performed for a consideration. This is not a mere academic gesture, for Mr. Skrupa testified (R. 76) that a debt adjustment service is operated at Phoenix, Arizona, by a group of creditors for the benefit of themselves and those indebted to them. It was also his understanding that a like service is performed in some places by an agency of the Community Chest.

In addition, the statute expressly states that it is not applicable to debt adjusting when incurred incidentally in

the practice of law. We think the legislature could properly make this exception. The evidence in this case shows that the debt adjuster advertises his services, but the lawyer cannot. It shows that the adjuster cannot give the service which the client thinks he will get if the adjuster ignores the legal aspects of the debtor's problem, whereas the lawyer is fitted by his training to give the debtor the kind of service he really needs. And the adjuster is not governed by canons of legal ethics whose violation may render the attorney liable to disbarment. The result is that debt adjustment is not entirely banned in Kansas, but is regulated to the extent that it may still be done by those who are not actuated by the profit motive, and by those whose professional skill fits them for such service, and who are subject to the restraints imposed by professional ethics. Recognizing in debt adjusting an occupation which it deemed harmful to the public, the legislature chose a remedy which it deemed would supply a needed protection to the public. And, even if the statute in question was not the best solution of the problem which might have been provided, it is one which is reasonably adapted to provide the protection which the legislature sought to give the public. The statute therefore does not violate any right guaranteed by the Fourteenth Amendment.

II. The Title of the Kansas Statute Complies with Constitutional Requirements.

In the court below, appellee Skrupa contended that the Kansas debt adjusters statute was insufficient to meet the requirements imposed by Art. II, Section 16 of the Kansas Constitution, and that because thereof, said statute is invalid. In deciding this case, the court below made no comment on this contention. The question is, of course, one of state law, and will be considered briefly.

The constitutional provision referred to above (Art. II, Sec. 16) is as follows:

> "Sec. 16. Subject and title of bills: Amendment of laws: No bill shall contain more than one subject which shall be clearly expressed in its title, and no law shall be revived or amended, unless the new act contain the entire act revived or the section or sections amended, and the section or sections so amended shall be repealed."

This constitutional provision was discussed in *In re Division of Howard County*, 15 Kan. 194, 214:

> "The 'subject' to be contained in a bill under §16, art. 2, of the constitution, which provides that 'No bill shall contain more than one subject, which shall be clearly expressed in its title', may be as broad and comprehensive as the legislature may choose to make it. It may include innumerable minor subjects, provided all these minor subjects are capable of being so combined as to form only one grand and comprehensive subject; and if the title to the bill, containing this grand and comprehensive subject, is also comprehensive enough to include all these minor subjects as one subject, the bill, and all parts thereof, will be valid."

The Supreme Court of Kansas has consistently adhered to the rule as above stated. In *State ex rel.* v. *McCombs*, 129 Kan. 834, 284 Pac. 618 (1930), the court said (P. 837):

> "Without anticipating a decision as to the validity of some challenged details of the statute, it should be stated—as this court has often done heretofore—that the constitutional inhibition against the incorporation of more than one subject in a single act of the legislature is never to be construed in a narrow or technical sense, but rather the contrary. Whatever details are germane to the principal subject matter of

a statute or incidental thereto may properly be incorporated. . . ."

"Some practical rules for testing the sufficiency of titles to legislative enactments may be deduced from the many cases cited by counsel, to this effect: The more general the language of the title the broader the subject matter of the act may be with due deference to the constitutional requirement of section 16 of article 2 (*Division of Howard Co.*, 15 Kan. 194; *State* v. *Barrett*, 27 Kan. 213; *State* v. *Scott*, 109 Kan. 166, 197 Pac. 1089). The more restrictive the title the more the matter which may properly be included within the body of the act is likewise restricted. (*State, ex rel.* v. *Bankers, etc., Ass'n*, 23 Kan. 499). The title may be broader than the act itself, but the act may not be broader than the title. (*Ash* v. *Thorp*, 65 Kan. 60, 68 Pac. 1067; *State, ex rel.* v. *Reno County*, 98 Kan. 648, 650, 158 Pac. 861.)" (p. 838).

Even more recently, these principles have been reaffirmed in *State ex rel.* v. *Board of Education*, 173 Kan. 780 784-5, 252 P.2d 859 (1953); *State ex rel.* v. *Kansas Turnpike Authority*, 176 Kan. 683, 697, 273 P.2d 198; *Water Dist. No. 1* v. *Robb*, 182 Kan. 1, 9, 318 P.2d 387 (1957); *State ex rel.* v. *Wichita*, 184 Kan. 196, 198, 335 P.2d 786 (1959).

The principles above stated have been applied in the United States Supreme Court, when considering state statutes attacked on the ground of failure to comply with constitutional provisions similar to Art. II, Sec. 16 of the Kansas Constitution. See *Posados* v. *Warner, Barnes & Co.*, 279 U.S. 340, 73 L. Ed. 729, 732, 49 S. Ct. 333; *Utah Power & Light Co.* v. *Pfost*, 286 U.S. 165, 187, 76 L. Ed. 1038, 1050, 52 S. Ct. 548; *Montclair* v. *Ramsdell*, 17 Otto 147, 155, 27 L. Ed. 431, 434; *Detroit* v. *Detroit Citizens Street Railway Co.*, 184 U.S. 368, 46 L. Ed. 592, 609; *Blair* v. *Chicago*, 201 U.S. 400, 452, 50 L. Ed. 801, 823, 26 S. Ct. 427.

The title of Senate Bill No. 366, now known as Laws of 1961, Ch. 190, is as follows:

> "AN ACT concerning the business of debt adjusting; making certain acts unlawful, and prescribing penalties therefor:"

We think this title sufficiently comprehensive to embrace all the provisions of the act, and that such provisions do not cover more than one subject. That subject is "the business of debt adjusting." While the title specifies also the creation of a misdemeanor and prescribes the penalty for violation, that misdemeanor is intimately related to and connected with the subject of "the business of debt adjusting." Aside from the title, and the effective date, the statute consists only of the definition of "the business of debt adjusting" and the proviso excepting such acts when "incurred incidentally with the lawful practice of law in this state." It cannot be doubted that the definition of "the business of debt adjusting" is germane to the subject of the act; and the exception permitting attorneys in the regular practice of their profession is likewise certainly within the scope of the title.

The scope of a title couched in broad general terms is illustrated by L. 1909, Ch. 182, now being found in G.S. 1949, Ch. 60. This is the present code of civil procedure, comprised of some 900 sections covering such diverse subjects as limitations, venue, parties, trials, appeals, divorce, etc. The title to this act was simply "AN ACT concerning the code of civil procedure." One section made some change in the procedure for appeals in divorce cases, and in *Miller* v. *Miller*, 113 Kan. 22, 213 Pac. 634, it was contended that the act was invalid because no reference was made to divorce in the title of the act. The Supreme Court of Kansas upheld the statute, saying:

> "Defendant also complains that the limitation of time in which to file a notice of intention to appeal is found under a subtitle, 'Divorce and Alimony' in the code of civil procedure, and that the title to the act is not sufficiently broad. There is no merit in defendant's contention. The words 'Divorce and Alimony' are not part of the title but constitute a subhead. The title to the act is, 'AN ACT concerning the code of civil procedure.' The rule has been announced in many cases that section 16 of article 2 of the constitution is not to be construed in any narrow or technical spirit. It must be applied in a fair and reasonable way. It is sufficient if the title fairly indicates, in general terms, its scope and purposes. Provisions of our code covering divorce and alimony are properly found in the 'ACT concerning the code of civil procedure.'"

Numerous similar cases can be found in the Kansas reports, but reference is made only to *City of Wichita* v. *Sedgwick County*, 110 Kan. 471, 204 Pac. 693, which involved certain sections of the Act of 1903 entitled "AN ACT relating to cities of the first class." The county contended that the title was insufficient to include sections requiring the county to reimburse the city for expenses in connection with epidemics of contagious diseases. The Court said that this contention was without merit, the act being obviously designed as a code covering the functions of government in cities of the first class, fixing their status and defining their powers and duties with respect to themselves and to their articulate relationship with the general scheme of government in this state and its various subdivisions, and these details need not be stated in the title.

It cannot be said that the penal provisions in the statute in question went beyond the scope of its title, as the title expressly mentions "making certain acts unlawful and prescribing penalties therefor." The sole question with

respect to this language of the title is whether it introduces a separate and further subject not included in the title of the act.

In *State* v. *Campbell*, 50 Kan. 433, 32 Pac. 35, it was contended that a section making it an offense to maintain a liquor nuisance was not included in the title. The Court said that "that part of the title which says, 'AN ACT relating to intoxicating liquors' is certainly enough to cover the provision in question."

One further example will suffice. Kansas has a statute entitled "AN ACT defining vagrancy and providing punishment therefor." The act defined four distinct acts as constituting vagrancy, and a defendant challenged the constitutionality of the statute. The Court said:

> "The petitioner first assails the title of the act, contending that it does not fairly cover the subject of the act and embraces more than a single subject. It is a broad and comprehensive title, relating to vagrancy, a single subject. Certain acts of commission and omission are denounced as vagrancy and the punishment for them is prescribed. Under the decisions that have been made these are so clearly within the scope of the title that a discussion is not justified." (Citing cases).
>
> *In re Clancy, Petitioner*, 112 Kan. 247, 210 Pac. 487.

On the basis of the foregoing, we contend that the statute in question (L. 1961, Ch. 190) does not violate the requirement that an act must not cover more than one subject, and that such subject must be clearly stated in its title. The statute is therefore not unconstitutional and invalid on that ground.

For the reasons above stated, we submit that the statute in question should be held valid, that the judgment of

the trial court should be overruled, and that the permanent injunction restraining appellees from enforcing said statute should be vacated.

Respectfully submitted,

WILLIAM M. FERGUSON,
Attorney General of the State of Kansas,
Topeka, Kansas.

APPENDIX A.

Kansas Session Laws of 1961 (also referred to as Senate Bill No. 366. Section of 1961)

CHAPTER 190

CONCERNING THE BUSINESS OF DEBT ADUSTING; MAKING CERTAIN ACTS UNLAWFUL AND PRESCRIBING PENALTIES THEREFOR

Senate Bill No. 366

AN ACT concerning the business of debt adjusting; making certain acts unlawful and prescribing penalties therefor.

Be it enacted by the Legislature of the State of Kansas:

SECTION 1. For the purpose of this act, "debt adjusting" means the making of a contract, express, or implied with a particular debtor whereby the debtor agrees to pay a certain amount of money periodically to the person engaged in the debt adjusting business who shall for a consideration distribute the same among certain specified creditors in accordance with a plan agreed upon. Whoever engages in the business of debt adjusting shall be guilty of a misdemeanor and upon conviction thereof shall be punished by a fine of not more than five hundred dollars ($500), or by imprisonment in the county jail not exceeding six (6) months, or by both such fine and imprisonment: *Provided*, That the provisions of this act shall not apply to those situations involving debt adjusting as herein defined incurred incidentally in the lawful practice of law in this state.

SEC. 2. This act shall take effect and be in force from and after its publication in the statute book.

Approved April 13, 1961.

APPENDIX B.

State Statutes relating to Debt Adjustors:

1940 Minnesota St. Ann., 332.04-332.11 (1940)
1955 Maine, 1961 Supp., Ch. 137, Secs. 51-53 (1955)
1955 Massachusetts, Ann. Laws, C221, Sec. 46c (1955)
1955 Pennsylvania Stat. Ann., Title 18, Sec. 4897 (1955)
1956 Georgia, Code Ann., 84-3601, 3603 (1956)
1956 New York, McKinney's Consol. Laws Ann. Penal Law, Art. 39, Secs. 410, 412 (1956)
1956 Virginia, Code, 54-44.1 (1956)
1957 California Financial Code, 12200-12331
1957 Illinois Ann. Stat., c 16 1/2, 251-272
1957 Oklahoma Statutes Ann., Title 24, Secs. 15-18
1957 West Virginia, 1960 Supp., to Code Ann. 6112(4)
1957 Wyoming Statutes 33-190 to 33-192
1958 Ohio Revised Code Ann. 4710.01-4710.99
1959 Florida St. Ann. 559.10 to 559.13
1960 New Jersey St. Ann. 2 A: 99A 1 to 99A 4.
1961 Kansas, G.S. 1961 Supp., 21-2464 (SL 1961, Ch. 190)

APPENDIX C.

List of Published Articles:

Personal Finance Law Quarterly Report:

Vol. 10, No. 1, Winter, 1953, p. 3, 1955 "Pennsylvania Prohibits Debt Adjustment Companies."

Vol. 10, No. 2, Spring, 1956, p. 36. "New York Outlaws Debt Pooling."

Vol. 11, No. 2, Spring, 1957, p. 46.	"Massachusetts Upholds Anti-debt Pooling Statutes."
Vol. 16, No. 4, Fall, 1962, p. 116.	"Kansas City Better Business Bureau, 'Debtors Misled and Deceived by Proraters.'"

Unauthorized Practice News:

Vol. 13, No. 5, June, 1955	"Debt Adjustment—Meanest Racket Out."
Vol. 21, No. 4, Dec., 1955, pp. 64, 113.	
Vol. 21, No. 4, Dec., 1956, p. 29.	"Should Debt Adjusters Be Outlawed?"
Vol. 23, No. 3, Sept., 1957, p. 6.	Illinois Bar Counsel Report

The Legal Aid Brief Case (of National Legal Aid Assn.)

Vol. 13, No. 5, June, 1955, pp. 99, 105.	Reprint of "Debt Adjustment, Meanest Racket Out."
Readers Digest, Oct., 1955.	"Beware of Debt Adjustment Racketeers." (Condensed from "Debt Adjustment, Meanest Racket Out.")
Good Housekeeping, Feb., 1959.	"Warning, the debt adjusters are back."
A.F.L.-C.I.O., Executive Council, Feb. 21, 1961.	"Statement on Debt Adjustment Business."
A.F.L.-C.I.O., Federationist, Sept., 1961.	"The debt pool sharks."

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IN THE

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1962.

No. 111

KEITH SANBORN, County Attorney of Sedgwick County, Kansas, and WILLIAM M. FERGUSON, Attorney General of the State of Kansas,
Appellants,

vs.

FRANK C. SKRUPA, Doing Business As "Credit Advisors",
Appellee.

APPEAL FROM THE UNITED STATES DISTRICT COURT FOR THE DISTRICT OF KANSAS.

BRIEF OF APPELLANT KEITH SANBORN, COUNTY ATTORNEY OF SEDGWICK COUNTY, KANSAS

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IN THE

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OCTOBER TERM, 1962.

No. 111

KEITH SANBORN, County Attorney of Sedgwick County, Kansas, and WILLIAM M. FERGUSON, Attorney General of the State of Kansas,
Appellants,

vs.

FRANK C. SKRUPA, Doing Business As "Credit Advisors",
Appellee.

APPEAL FROM THE UNITED STATES DISTRICT COURT FOR THE DISTRICT OF KANSAS.

BRIEF OF APPELLANT KEITH SANBORN, COUNTY ATTORNEY OF SEDGWICK COUNTY, KANSAS

OPINION BELOW

The opinion of the three-judge court below (R. 126-133) is reported in 210 F.Supp. 200 (D. Kan. 1961).

JURISDICTION

The opinion of the three-judge court was rendered on November 27, 1961 (R. 126). Judgment pursuant to the opinion was entered on January 18, 1962 (R. 133). Appellants filed their notice of appeal on January 26, 1962 (R. 136). Order noting probable jurisdiction was entered by this Court on October 8, 1962 (R. 142). Appellate jurisdiction of this Court rests on 28 U. S. C., §1253.

QUESTION PRESENTED

Whether L. 1961, Ch. 190, June 30, 1961 (G. S. Kan., 1961 Supp. 21-2464), prohibiting the business of "debt adjustment" in Kansas except as engaged in "incidentally in the lawful practice of law in this state", is constitutional as applied to appellee Frank C. Skrupa, a layman.

STATUTE INVOLVED

The Kansas Debt Adjustment Act (L. 1961, Ch. 190, *supra*) reads:

> "AN ACT concerning the business of debt adjusting; making certain acts unlawful and prescribing penalties therefor.
>
> "*Be it enacted by the Legislature of the State of Kansas*:
>
> "Section 1. For the purpose of this act, 'debt adjusting' means the making of a contract, express [sic.] or implied with a particular debtor whereby the debtor agrees to pay a certain amount of money periodically to the person engaged in the debt adjusting business who shall for a consideration distribute the same among certain specified creditors in accordance with

a plan agreed upon. Whoever engages in the business of debt adjusting shall be guilty of a misdemeanor and upon conviction thereof shall be punished by a fine of not more than five hundred dollars ($500), or by imprisonment in the county jail not exceeding six (6) months, or by both such fine and imprisonment: Provided, That the provisions of this act shall not apply to those situations involving debt adjusting as herein defined incurred incidentally in the lawful practice of law in this state.

"Sec. 2. This act shall take effect and be in force from and after its publication in the statute book."

STATEMENT

The suit below was filed June 27, 1961, by Frank Skrupa, a resident of Nebraska, who was engaged in the "debt adjustment" business in Wichita, Sedgwick County, Kansas (R. 1). Count I of the complaint sought an injunction against the Sedgwick County Attorney and against the Kansas Attorney General to prevent enforcement of the Kansas Debt Adjustment Act as violative of the due process, equal protection, and contract clauses of the federal constitution, and also as violative of Article 2, Section 16, of the Kansas constitution because the subject of the act was allegedly not clearly expressed in its title (R. 2). Count II sought a declaratory judgment regarding the act's alleged invalidity (R. 6).

The case was tried to a three-judge court in accordance with 28 U. S. C., §§2281 through 2284. The evidence established, inter alia, that neither Mr. Skrupa nor any of his employees were lawyers (R. 13); also, that on February 10, 1961, a state district court had denied Mr. Skrupa injunctive relief in part because his business "smacks of unauthorized practice of law" (R. 125). On November 27,

1961, by a two-to-one majority the three-judge court rendered an opinion holding the statute violative of the due process clause of the fourteenth amendment to the federal constitution (R. 126-132). Injunctive relief was awarded to plaintiff per the prayer of Count I of his complaint (R. 133-135).

SUMMARY OF ARGUMENT

1. Even the majority opinion below concedes that:

> "Debt adjustment by its very nature may lend itself to great abuses and because of this the state has power to regulate it to the end that its citizens may not be overreached by unscrupulous persons. No doubt the state can . . . limit the business to certain classes of qualified persons." (R. 129-130).

Moreover, the services necessarily involved in "debt adjustment" constitute the practice of law. Finally, financially distressed debtors seeking relief via "debt adjustment" need competent legal advice as to the validity and priority of their creditors' claims and the comparative advantages and disadvantages of other available remedies (such as Chapter 13 of the bankruptcy laws), none of which counsel even a scrupulously honest layman is qualified to give. For any one or more of these three reasons the Kansas legislature was clearly entitled to prohibit laymen from engaging in the business of "debt adjusting".

2. Actually, the majority opinion below does not gainsay this conclusion. It neither holds nor suggests that the Kansas statute would not have been valid had it left the "debt adjustment" field open to licensed attorneys The premise of the decision below is its interpretation of "incurred incidentally in the lawful practice of law" as meaning that even lawyers may not confine their practice to

the business of "debt adjusting". This is an unreasonable interpretation of the statute which does *not* enact that a lawyer may adjust debts "only as an incident to a *case* which is otherwise before him" (R. 130; our italics) or specify that lawyers may conduct this business only as an incident of "the *general* practice of law" (R. 130; our emphasis). The statute says, merely, that lawyers may engage in this business "incidentally to the *lawful* practice of law in this state" (p. 3, *supra;* emphasis added). In other words, lawyers who are engaged in the lawful—not "general" but "lawful"—practice of law in Kansas may, as an incident of their lawful practice, engage in "debt adjustment". Nothing in the statute compels the conclusion that a lawyer may not devote as much of his time to this field as he deems advisable. As between these two possible interpretations, the court should adopt the one which upholds rather than the one which would invalidate the statute (*N. L. R. B.* v. *Jones & Laughlin Steel Corp.*, *infra*, 301 U. S. at 30).

3. Even assuming, arguendo, that the lower court's interpretation of "incidentally to the lawful practice of law in this state" is correct, nevertheless the decision below is erroneous. The trial court held the statute invalid not because it prevents *laymen* from engaging in "debt adjusting", but because, as interpreted by the court, it prohibits *lawyers* from doing so (or, alternatively, unreasonably classifies those lawyers who may and those who may not). Appellee Skrupa, a *layman*, to whom the statutory prohibition is entirely proper, has no "standing" to complain that the statute is unconstitutional as applied to *lawyers* (*Collins* v. *Texas*, *infra*, 232 U. S. 288).

ARGUMENT

We are in complete accord with and hereby approve and adopt the separate brief which appellant William M. Ferguson, Attorney General of the State of Kansas, is contemporaneously filing herein. The instant brief represents an attempt to supplement, without reiterating, the arguments and authorities contained in the Attorney General's brief.

I.

Prohibiting Laymen from Engaging in "Debt Adjustment" Is a Reasonable Exercise of State Police Power

Although the majority opinion below fallaciously *assumes* that "debt adjustment" constitutes a "lawful business", it nevertheless concedes that such business is ". . . affected by a public interest and because of its nature is subject to regulation by a state under its police powers" (R. 128). We submit that upon three distinct bases the legislature may properly deny to laymen the right to engage in this line of work.

(a) "Debt adjustment" is peculiarly susceptible to fraudulent practices by unscrupulous laymen.

The majority opinion below concedes that by its very nature "debt adjustment" lends itself to nefarious practices:

> "Debt adjustment by its very nature may lend itself to great abuses and because of this the state has power to regulate it to the end that its citizens may not be overreached by unscrupulous persons." (R. 129)

That "debt adjustment" as commonly practiced by "unscrupulous" laymen is inimical to the public welfare has been widely and uniformly recognized since at least 1955.

For example, see "Report of New York State Bar Association Committee on Unlawful Practice of the Law", *Unauthorized Practice News* (Dec. 1955),[1] page 63:

> "A nationwide scandal has been in the making the last several years from the mushrooming business variously called 'Debt adjustment service,' 'Debt pro-rating business,' 'Budget planning business,' 'Debt-lumping' and 'Debt pooling.'
>
> "Apparently the large cities are the scene of operations of this business, which has been described as 'an incredibly vicious racket,' by Boston's District Attorney Garrett H. Byrne." (p. 64)
>
> "Better Business Bureaus, Retail Credit Bureaus, and other commercial enterprises have been plagued with this very undesirable system, and have lent their aid and support to the various lawyer groups, Bar Associations and Legal Aid Associations throughout the country." (p. 64)
>
> "The publication 'Briefcase,' Vol. XII, No. 5, June 1955, published by the National Legal Aid Association, contains a very enlightening and thorough article on the operation, entitled 'Debt Adjustment—Meanest Racket Out,' by Murray Teigh Bloom." (p. 65)

At page 113 of this same December, 1955, issue of *Unauthorized Practice News*, the following appears:

> "Mr. [Thomas J.] Boodell, Chairman of the American Bar Association Committee on Unauthorized Practice of the Law, reported at the Northwest

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1. *Unauthorized Practice News* is published by The American Bar Association Committee on Unauthorized Practice of Law.

Regional Meeting and Deep South Regional Meeting of the American Bar Association on current activities of the committee. His remarks were as follows:

"'We wish to call to your attention what appears to be a "mean racket" as one writer called it. I refer to so-called debt adjustment companies—more often called "pro-rating," "lumping" or "debt-pooling" companies. In the past two years such slogans have lured thousands of desperate Americans and Canadians into a questionable scheme cleverly disguised as a sensible means of helping debt-ridden families pay all their obligations through one agency . . . Allen E. Bachman, Executive Vice-President of the Better Business Bureau, has said that these operations are well on their way of becoming a national scandal . . .'"

To much the same effect see the December, 1956, issue of *Unauthorized Practice News:*

". . . During recent months we have been corresponding with Mr. Dale Tooley of the University of Colorado School of Law. Mr. Tooley has been making an exhaustive study of the subject and recently sent us a copy of a paper entitled 'Colorado Should Outlaw Debt Adjusters.'

"We were strongly tempted to print it in full because it is such an excellent study but since it is some 27 pages in length we must content ourselves with a digest of its more salient portions.

"In the introduction to this paper, Mr. Tooley refers to quotations terming the debt adjustment business as 'the meanest racket out' and as 'an incredibly vicious racket.'" (p. 29)

"While Mr. Tooley's paper is of nation-wide interest, its initial purpose was to explore the question of whether or not the state of Colorado should outlaw debt adjusters, and he reaches the conclusion that the Colorado legislature should have no hesitancy in

taking such steps and that quick action would prevent more adjusters from moving into the state as they are now threatening to do." (p. 32)

Volume 10 of *Personal Finance Law Quarterly Report* (Spring, 1956), contains a comprehensive report by the Honorable Jacob K. Javits, then Attorney General of the State of New York, regarding a newly enacted statute prohibiting the practice of "debt adjustment" in that state except by attorneys, portions of which report are as follows:

"After a thoroughgoing study of debt pooling activities in New York State over a period of almost one year by my office and other agencies, the Legislature enacted a bill to prohibit the business in the State of New York. As a matter of basic policy I am opposed to outlawing any business, yet my office could suggest to the Legislature no practical way to regulate properly such activities." (p. 36)

"Governor Averell Harriman signed the bill on February 27, 1956, and it became effective immediately. (Chapter 31, Laws 1956). In signing this act to amend the penal law in relation to debt pooling plans, the Governor issued a strong supporting statement in which he said 'I have been informed by the Better Business Bureau of New York City "that there has been substantial justified complaint about the practices of some of the companies engaged in budget planning".' The Governor also mentioned the report of my office to him in which various types of abuses had been pointed out. He then went on to say:

" 'It appears that these practices are so common and widespread in the area affected, that the only feasible way to control them is by prohibiting this type of business with the exception already noted. (The exception is that debt pooling is authorized as a practice of l w.)

" 'There is no absolute right to engage in a business that conflicts with the public interest. In my

opinion "budget planning," as defined in this bill, is such a business.

> "'This bill has the approval of the Better Business Bureau, United Neighborhood Houses, New York Citizens Council, National Legal Aid Association, Brooklyn Bureau of Social Services, Conference of Personal Finance Law, the Empire State Chamber of Commerce, The New York State Bar Association, the Special Assistant to the Governor on Consumer Problems, the Banking Department and many other reliable organizations.'" (p. 37)

To substantially the same effect is an article by Robert D. Abrahams, Esquire, Chief Counsel for the Legal Aid Society of Philadelphia, "Debt Pooling Now Criminal in Pennsylvania", published in 15 *Personal Finance Law Quarterly Report* (Fall, 1961), p. 119.

Articles in leading "lay" magazines unanimously confirm the foregoing professional view. Thus, see "Beware of 'Debt-Adjustment' Racketeers", *Reader's Digest* (Oct. 1955), page 51; "Warning: The Debt 'Adjusters' Are Back!", *Good Housekeeping* (Feb. 1959), page 121; and "Debt Pooling: How Not to Get Out of Debt", *Coronet* (Oct. 1961), page 155. See, too, the official statement issued February 21, 1961, by the AFL-CIO Executive Committee (reproduced in 15 *Personal Finance Law Quarterly Report*, Summer, 1961, p. 88), which, after summarizing various problems incident to "debt adjusting" by laymen, concludes:

> "The AFL-CIO, therefore, is of the view that the debt adjustment business, regulated or unregulated, is not economically or socially desirable as a commercial activity, and should be eliminated."

At least two courts have squarely proclaimed the distinction between "debt adjustment" as practiced, on the one

hand, by lawyers who cannot advertise and are subject to the ethical standards and discipline of their profession, and, on the other hand, as engaged in by laymen who solicit the business of distressed debtors through extravagant advertisements and who are exempt from the restraints of professional ethics: *American Budget Corp.* v. *Furman*, 67 N. J. Super. 134, 170 A. 2d 63, 68 (Ch. Div. 1961), *aff'd per curiam*, 36 N. J. 129, 175 A. 2d 622 (1961), and *Home Budget Service* v. *Boston Bar Association*, 235 Mass. 228, 139 N. E. 2d 387, 390 (1957). Both decisions uphold as constitutional statutes prohibiting laymen from engaging in the business of "debt adjustment".

(b) "Debt adjustment" is an integral and traditional aspect of the practice of law. Moreover, financially embarrassed citizens require "debt adjustment" services and advice of a type which no layman is qualified to furnish.

We submit that the majority opinion below erred in its basic hypothesis that the sole object sought to be attained by the present Kansas statute was to ". . . protect those in financial distress *from exploitation by unscrupulous and dishonest operators*" (R. 130, our emphasis; Cf. R. 129). It is reasonable to assume that the Kansas legislature also considered that "debt adjustment" necessarily entailed the practice of law which perforce no layman, however honest, may undertake—or/and that financially distressed debtors require "debt adjustment" services and advice which no layman, again however honest, can possibly supply. Either of these premises supplies undeniable justification for a statute prohibiting "debt adjusting" by any person who is not a licensed attorney.

This Court judicially knows that "debt adjustment" is a legal service which has traditionally been performed by lawyers, a fact which is recognized by the New Jersey

court in *American Budget Corp.* v. *Furman, supra*, 170 A. 2d at 68:

> ". . . services encompassed by the statutory definition of debt adjuster are often an integral and essential part of an attorney's job when he represents a debt-ridden client."

In this same connection, see "The Lawyer and the Social Worker", a printed brochure published in 1959 by Family Service Association of America.[2] This booklet is addressed entirely to the problem of cooperation between lawyers and social workers. It evinces no awareness of or concern with the problems involved in the instant appeal and constitutes an entirely neutral, unbiased authority. It is, then, significant that this publication recognizes "debt adjustment" as an important segment of ordinary legal practice. In fact, "debt adjustment" is singled out as one of three principal areas (the other two being "marital conflict" and "adoption") in which cooperation between social workers and lawyers is especially important:

> "Debt adjustment is another pressing problem which besets many families who come to social agencies for help. . . . A lawyer can often give invaluable help to families who are willing to do their best under guidance to extricate themselves from a destructive burden of debt. This is another area, then, in which lawyer and caseworker can pool their useful services in shoring up imperiled family life." (pp. 22-24).

Numerous articles in *Unauthorized Practice News* (including those cited *supra*) published by the American Bar Association Committee on Unauthorized Practice of the Law discuss "debt adjustment" as a deplorable instance of unauthorized legal services by laymen. For example,

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2. 215 Fourth Avenue, New York 3, N. Y.

the "Report of New York State Bar Association Committee on Unlawful Practice of the Law", *Unauthorized Practice News* (Dec. 1955), pages 63-68, concludes:

> "NOW IS THE TIME TO DESTROY THIS VICIOUS SYSTEM OF UNLAWFUL PRACTICE OF LAW IN ITS INCEPTION.
>
> "VIGILANCE DEMANDS THAT THE LAWYERS NOT SLEEP ON THIS SUBJECT, AS WE HAVE IN SO MANY OTHER FIELDS WHICH HAVE BEEN APPROPRIATED BY LAYMEN.
>
> "LET US OUTLAW THE DEBT ADJUSTMENT SERVICE, BY WHATEVER NAME CALLED, AS AN APPROPRIATE STATUTE TO BE PRESENTED TO THE NEXT LEGISLATURE OF THE STATE OF NEW YORK WHICH DESCRIBES IT AS 'UNLAWFUL PRACTICE OF LAW' IN PLAIN TERMS.
>
> "PUBLIC OPINION AND PUBLIC WELFARE DEMANDS IT. JUSTICE REQUIRES IT."

See, also, "Illinois Bar Counsel Reports on 1957 Legislation", by Richard B. Allen, Esquire, counsel for the Illinois State Bar Association, *Unauthorized Practice News* (Sept. 1957), at pages 9-10:

> "Of course the matter cuts much deeper than whether debt-pooling activity should be regulated by the state. The crux is whether debt-pooling, albeit dressed up with the title of 'financial planning and management service,' entails the practice of law, and, if so, whether the legislature can thus regulate who may engage in such activity. It is axiomatic that each state determines for itself what constitutes the practice of law. The norms are ordinarily found in case law and often in statute. Is debt-pooling the practice of law *per se*? The closest approaches to this are a 1957 decision by the Supreme Judicial Court of Massachusetts and an opinion of the Attorney General of

Illinois [both of which give affirmative answers to Mr. Allen's rhetorical question]."

And see Tooley, "Should Debt Adjusters Be Outlawed?", *Unauthorized Practice News* (Dec. 1956), 29. At page 31 of this article the author points out that:

> "Massachusetts, Virginia and the Province of Quebec have passed statutes specifically outlawing the business or debt adjustment as the unauthorized practice of law."

The Massachusetts statute has been upheld as constitutional by the Massachusetts Supreme Court: *Home Budget Service* v. *Boston Bar Association, supra,* 139 N. E. 2d 387 (Mass. 1957). *In re Pilini,* 122 Vt. 385, 173 A. 2d 828 (1961), held, without the benefit of any statute whatever, that "debt adjusting" by a layman constituted the unauthorized practice of law. Inter alia the court observed:

> "A well founded criticism of debt pooling appears to be that a debt pooler owes his undivided loyalty to the debtor who retains his services and he cannot therefore at the same time properly be an agent for creditors. He cannot serve two masters." (173 A. 2d at 830)

> "We have no statute in this State governing debt pooling plans. Statutes may aid by providing machinery and criminal penalties governing certain business activities, but may not extend the privilege of practicing law to persons not admitted to practice by this Court. *The latent danger in such a program is that there is such a strong likelihood of legal service or advice being involved where debtors find themselves in financial difficulties,* or are defendants in various types of litigation, *and then seek assistance from a debt pooler,* as was done in this case." (173 A. 2d at 830; our emphasis)

See, too, *American Budget Corp.* v. *Furman, supra,* 170 A. 2d at 68 (N.J. Super. 1961):

> "It is plain by now that in their activities debt adjusters may encroach upon the practice of law."

With respect to the State of Kansas, in *Depew* v. *Wichita Association of Credit Men,* 142 Kan. 403, 49 P. 2d 1041 (1935), *cert. den.* 297 U. S. 710, 80 L. ed. 997 (1936), the trial court's "Finding VI" (142 Kan. at 409, 49 P. 2d at 1045) covers a factual situation analogous to "debt adjusting" as defined in the present Kansas statute. The Supreme Court held that activities of this type constitute the unauthorized practice of law (142 Kan. at 410, 49 P. 2d at 1045).[3]

In Kansas, as in most states, "The practice of law also includes the giving of advice or rendering services requiring the use of legal skill and knowledge . . ." (*Depew* v. *Wichita Association of Credit Men, supra,* 142 Kan. at 412, 49 P. 2d at 1046-1047), which definition aptly describes the type of services necessarily involved in "debt adjustment". See, too, the opinion rendered by the District Court of Sedgwick County, Kansas, on February 10, 1961, in Case No. B-6975, *Frank C. Skrupa* v. *Gordon Oliver* (R. 124-126), wherein instant appellee was plaintiff: "I am of the opinion that the plaintiff's business as conducted here in Wichita smacks of unauthorized practice of law . . ." (R. 125). In addition, see "Debt Adjusting Prohibited in Kansas", 15 *Personal Finance Law Quarterly Report* (Summer, 1961), page 87, and "Prohibitory Debt Adjusting Law

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3. In the lower court, instant appellee sought to escape the *Depew* holding by referring to the terms of a *consent* decree entered in the *district* court *following* the Kansas Supreme Court opinion (R. 36-38). How this subsequent action by the litigants could affect the prior appellate court decision was not explained.

Declared Unconstitutional by Three Judge Federal Court in Kansas", 16 *Personal Finance Law Quarterly Report* (Spring, 1962), page 49. Both of these articles are written by Wilbur D. Geeding, Esquire, Chairman of the Committee on Unauthorized Practice of Law of the Wichita (Kansas) Bar Association, and both evince the committee's opinion, based upon extensive investigations, that "debt adjustment" by laymen constitutes the unauthorized practice of law in Kansas—a conclusion which is manifest from the intervening petition filed in the court below by Mr. Geeding and his committee (R. 44).

However, even assuming arguendo that "debt adjustment" as practiced by instant appellee, Mr. Skrupa, and by most other laymen, does not involve the rendition of any legal services whatever, the instant statute may nevertheless be sustained upon the premise that "no effective job of debt adjustment can be performed *without* rendering legal services" (*Unauthorized Practice News*, Dec. 1956, at page 31; italics added). In this connection, see *Home Budgeting Service* v. *Boston Bar Associations, supra,* 139 N.E.2d at 390 (Mass.):

> "That the debt pooler neither enters the court room nor prepares legal documents does not save its conduct from classification as the practice of law. Nor is there escape in the fact that it does not advise as to the validity of claims; for, quite to the contrary, its omission to do so may be a surrender to some demands which a member of the bar perhaps ought to question and advise the debtor to contest. The debt pooler's plan and its administration thus exclude the debtor from skilled professional legal advice. So, where there is a conditional sale contract, the creditor may be paid, even in full, notwithstanding that there may have been no compliance with the applicable statutes. In this field the rules of law are most stringent, and the condition of the sale may be lost because of some

departure in the contract from the prescribed statutory language."

The Kansas legislature may—and should—reasonably have concluded that a financially distressed debtor seeking relief through "debt adjustment" needs competent *legal* advice regarding the validity and priority of his creditors' claims, the Kansas exemption laws, and the nature and comparative merits and disadvantages of the various remedies available to him—specifically including, although not limited to, a complete explanation of Chapter 13 of the federal bankruptcy laws which in nearly all instances affords considerably more efficacious relief than "debt adjustment".[4] See Allen, "Illinois Bar Counsel Reports on 1957 Legislation", *Unauthorized Practice News* (Sept. 1957), at page 7:

> "The debt-poolers' emergence to prominence, stimulated by an expanding consumer-credit economy and aided by extensive advertising, has concerned legislators and the bar for several years. In theory, debt-pooling performs a desirable social function: a person experienced in debt management consolidates a harassed debtor's obligations and through a budget system enables him to meet his obligations. In practice, however, the picture is vastly altered: a person with little or no training, not licensed to practice law and subject to no professional standards, through advertising which lures the hard-pressed debtor into believing that the debt-pooler can somehow retire obligations with the same amount of money the debtor has been unable to make go around, devises a payment plan for the debtor which involves the evaluation of claims and liens, the rights of the

4. "Debt Pooling Arrangements vs. Chapter XIII Proceedings", 46 *Ill. Bar Journal* 817 (June, 1958), by George R. Kennedy, Referee in Bankruptcy, U. S. District Court, Southern District of Illinois.

debtor under conditional sales contracts and advice on the debtor's legal rights. Because of the nature of the debt-pooler's clientele, the debt-plans frequently do not reach a conclusion, or if they do, the customer soon returns, after he has had a chance to create more debts, for another treatment. The only result accomplished for the debtor is the addition of another creditor, namely, the debt-pooler himself. There is provided by Chapter XIII of the Bankruptcy Act, moreover, an effective method by which a hard-pressed wage-earner may amortize his debts, coupled with the protection from creditors which is essential to make any debt-adjustment plan more than a mirage for the debtor. Neither under the present unlicensed debt-pooling operation, nor under the licensed system of H. B. 170, does the debtor have an effective adjustment plan unless at least creditors representing a large majority of his total debts accede to the plan. Under a Chapter XIII proceeding, the trustee's fee is 6% and the total cost to the debtor is probably less than he would pay for a debt-pooler's ineffective plan."

Accordingly, the Kansas legislature may have decided to prohibit "debt adjustment" by laymen, not merely to prevent the "unauthorized practice of law", but also to assure that all persons engaged in "debt adjusting" *do* practice law so that citizens who come to them for help will receive the type of advice and counsel they require.

By way of summary, the Kansas legislature may have enacted the instant prohibition against "debt adjusting" by laymen for any one or more of three distinct reasons: (1) "debt adjustment" is peculiarly susceptible to fraud and overreaching by unscrupulous laymen and therefore should be confined to lawyers whose profession precludes advertising and imposes rigid ethical standards; (2) "debt adjusting" necessarily constitutes the practice of law; and/or (3) financially distressed citizens are in dire need of "debt adjustment" advice of the type which no layman,

however honest, is qualified to furnish. It is, we submit, unarguable that such a prohibition may constitutionally be adopted by the state legislature in the exercise of its police power. In this connection, it is significant that one state in 1940, and, since 1955, sixteen additional states plus two Canadian provinces have enacted statutes proscribing (or, in a few instances, rigidly regulating) the practice of "debt adjustment" by laymen.[5]

II.

That the Statutory Exemption Is Confined to "Debt Adjusting" Incident to the Practice of Law Affords No Justification for the Judgment Below.

The majority opinion below concedes not only that "debt adjustment" is by its very nature subject to "great abuses", but also that:

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5. Cal. Financial Code, §§12200-12331 (1957); Florida Stats. Ann., §§559.10-559.13 (1959); Ga. Code Ann., §§84-3601 to 84-3603 (1956); Ill. Ann. Stats., C. 16-1/2, §§251-272 (1957); G. S. Kan., 1961 Supp., 21-2464 (L. 1961, Ch. 190); Maine Stats. Ann., 1961 Supp., Ch. 137, §§51-53 (1955); Mass. Ann. Laws, Ch. 221, §46c (1955); 17 Mich. Ann. Stats. (Supp.), §23.630 (Act No. 135, Laws 1961, p. 171); Minn. Stats. Ann., §§332.04-332.11 (1940); 2A N. J. Stats. Ann., §§99a-1 to 99A-4 (1960); New York, McKinney's Consol. Laws Ann., Penal Law, Art. 39, §§410-412 (1956); 24 Okla. Stats. Ann., §§15-18 (1957); Ohio Rev. Code Ann., §§4710.01-4710.99 (1958); 24 Okla. Stats. Ann., §§14-18 (1957); 18 Purdon Penn. Stats. Ann., Crimes & Punishment, 1961 Supp., §4899—a statute enacted subsequently to the one declared unconstitutional in *Commonwealth* v. *Stone*, 191 Pa. Super. 117, 155 A. 2d 453 (1959); Va. Code, §54-44.1 (1956); West Va., 1960 Supp. to Code Ann., §6112(4) (1957); Wyo. Stats. Ann., §§33-190 to 33-192. In the limited time available to us in preparing this brief we have been unable to locate official citations to the Quebec statute prohibiting "debt adjusting" by laymen as the unauthorized practice of law, or to the Ontario statute severely regulating this business. However, see references to the Quebec statute in the Dec., 1956, issue of *Unauthorized Practice News*, p. 31, and to both the Quebec and Ontario statutes in 10 *Personal Finance Law Quarterly Report* (Spring—1956), p. 38.

". . . because of this the state has power to regulate it . . . No doubt, the state can, by proper regulations, set up standards and qualifications, *and even limit the business to certain classes of qualified persons.*" (R. 129-130; Emphasis added)

However, the majority opinion construes the instant statute as prohibiting *anyone* from engaging in "debt adjustment" as a business (R. 131). This conclusion is posited upon its interpretation of the "incurred incidentally in the lawful practice of law" exception contained in the act:

"The only exception is that the 'act shall not apply to those situations involving debt adjusting as herein defined incurred incidentally in the lawful practice of law in this state.' This, in our opinion, is not regulation, or if it is, it is an unreasonable regulation. To say that a lawyer may adjust debts only as an incident to a *case* which is otherwise before him, is most unreasonable. If a lawyer, engaged in the regular practice of the law, concluded there was a greater field for him in devoting all his time to debt adjustment, rather than to the *general* practice of law, he could not discontinue his *general* practice and devote his full time to debt adjustment. He could not do so because he can adjust debts only as an incident to his general law practice. We conclude, first, that the act is prohibitory and not regulatory; and that it prohibits anyone from engaging in the business of debt adjustment. But even if the exception is considered as regulatory, it is an unreasonable regulation of a lawful business." (R. 130; Emphasis ours)

Thus, the majority opinion does not hold that the Kansas legislature may not legally prohibit laymen from engaging in "debt adjustment". Nor does it hold that the present statute would be void as prohibitory, or as unreasonably regulatory, if its exemption encompassed all

lawyers authorized to practice in Kansas. Per contra, the majority opinion is bottomed on the assumption that the statutory exemption is void *because it is limited to lawyers who devote less than all of their practice to "debt adjustment"*. This assumption is, we submit, fallacious.

As hereinbefore demonstrated "debt adjustment" *is* a normal, traditional phase or "incident" of law practice. The statute says nothing whatever about the right of an attorney to "adjust debts" only "as an incident *to a case which is otherwise before him*" (R. 130; our italics). Nor does it enact that he may do so only incidentally to the "general" practice of law (R. 130). Instead, the statutory language reads "incidentally in the *lawful* practice of law in this state" (our italics). A lawyer who devotes his entire time to the examination of abstracts, or to the trial of law suits, or to the preparation of wills and trusts, does so as an incident to the *lawful* practice of law. So, here, the statute should not be construed as implying that an attorney may spend 50 per cent, or 75 per cent, or even 99 per cent of his time "adjusting debts" for clients, but must not devote 100 per cent of his efforts to this field, especially when so strained an interpretation would raise numerous difficulties in enforcement. (Would a lawyer be in violation of the criminal statute if he devoted himself exclusively to "debt adjustment" for, say, one week, or one month, or one year?)

Bear in mind, too, that Canon 27 of the American Bar Association Canons of Professional Ethics recognizes only two exclusive "specialties"—admiralty and patent-trademark-copyright. Nor is "debt adjustment" a "specialty" which is recognized even informally by members of the bar. Unlike "antitrust law", "labor law", "corporation law", "taxation", and innumerable other branches of the profession, "debt adjustment" does not even command a "section"

of its own for American Bar Association members interested in the "debt adjustment" field.

In accordance with the settled principle that as between two possible interpretations the court will adopt the one which upholds rather than the one which would invalidate the statute (*N. L. R. B. v. Jones & Laughlin Steel Corp.*, 301 U. S. 1, 30, 81 L. ed. 893, 908, 1937), we submit that "incidentally in the lawful practice of law" should not be accorded the unreasonably restricted meaning adopted by the majority opinion below.

But if, purely for purposes of argument, we assume that the lower court's interpretation of the statute is correct, we submit this affords no basis for granting injunctive relief herein to appellee Skrupa. The majority opinion below declares the statute unconstitutional not because it prevents *laymen* from engaging in the business of "debt adjustment", but solely because it prohibits *lawyers* from doing so, or, alternatively, because its classification of *lawyers* who may and *lawyers* who may not practice "debt adjustment" is unreasonable. Wherein is Mr. Skrupa, a *layman*, prejudiced by the fact that the statute may be unconstitutional *as applied to lawyers*? If, as has hereinbefore been demonstrated, the Kansas legislature may lawfully enact a statute barring all *laymen* from engaging in "debt adjustment" so long as the field is left open to lawyers, we submit that Mr. Skrupa has no "standing" to complain that the statute in controversy is unreasonably prohibitive or discriminatory *as to lawyers*. One to whom the application of a statute is constitutional may not maintain an attack against the statute on the ground that it is or may be unconstitutional as applied to others.[6]

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6. See *United States* v. *Raines*, 362 U. S. 17, 20-22, 4 L. ed. 524, 529-530 (1960), a leading authority on the so-called "stand-

CONCLUSION

For the reasons and upon the authorities contained in the separate brief filed herein by appellant William M. Ferguson, as well as for the reasons and upon the authorities cited herein, we submit that the judgment of the three-judge court below is erroneous and should be reversed.

Respectfully submitted,

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ing" doctrine. See, also, *Collins* v. *Texas*, 223 U. S. 288, 56 L. ed. 439 (1912), holding that an osteopath could not successfully attack a statute limiting the practice of medicine to holders of university medical degrees merely because as applied to Christian Scientists the statute might be unconstitutional.

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IN THE

Supreme Court of the United States

OCTOBER TERM, 1962

No. 111

WILLIAM M. FERGUSON, Attorney General for the State of Kansas, and KEITH SANBORN, County Attorney, for the County of Sedgwick, State of Kansas,
Appellants,

v.

FRANK C. SKRUPA, d/b/a/ CREDIT ADVISORS,
Appellee.

ON APPEAL FROM THE UNITED STATES DISTRICT COURT FOR THE DISTRICT OF KANSAS

MOTION FOR LEAVE TO FILE ATTACHED BRIEF FOR NATIONAL BETTER BUSINESS BUREAU, INC., AS *AMICUS CURIAE*

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ON APPEAL FROM THE UNITED STATES DISTRICT COURT FOR THE DISTRICT OF KANSAS

MOTION FOR LEAVE TO FILE ATTACHED BRIEF FOR NATIONAL BETTER BUSINESS BUREAU, INC., AS *AMICUS CURIAE*

National Better Business Bureau, Inc., a Delaware non-profit membership corporation, respectfully moves for leave to file the attached brief as *amicus curiae* in support of appellants in this cause, pursuant to Rule 42(3) of the Rules of this Court. Both appellants have consented to such filing. Consent was also requested of the attorneys for the appellee by the undersigned by air-mail letter mailed January 8, 1963, but by letter dated January 15, 1963 they refused to execute the consent,

—at least in the absence of information as to the "nature" of our client (of whose identity they had been informed by us) and as to the reasons why the case would not be "adequately presented to the court by the specific parties involved". Obviously, further correspondence on this matter with them would be fruitless.

The first objective for which the applicant was organized, as stated in its by-laws, is: "To aid in establishing and maintaining the highest possible standards of business practice as they affect the public interest; to combat and to help reduce unsound business practices, * * *."

For a number of years, local Better Business Bureaus have been opposing "debt pooling" or "debt adjusting" by non-lawyers because it has led to grave abuses and serious losses in their respective communities. National Better Business Bureau, Inc., which is organized separately from the local Better Business Bureaus, has joined in their efforts on a national basis. The interest of National Better Business Bureau, Inc. in the present appeal lies in the fact that the decision below would nullify the substantial efforts which the applicant and the local Better Business Bureaus have made and are making to combat the evils and abuses which have been prevalent where debt adjusting operations by laymen are permitted. Affirmance of the decision below would nullify the statutes of thirteen States (including Kansas) which have outlawed debt pooling by laymen and would put in jeopardy the statutes of seven additional states which have sought to regulate (with unsatisfactory results) such debt pooling in lieu of prohibiting them.

The broad interests which support such statutes are shown by the statement made by Governor Harriman of New York in signing into law the New York statute outlawing debt pooling by laymen:

> "This bill has the approval of the Better Business Bureau, United Neighborhood Houses, New York State Citizens Council, National Legal Aid Association, Brooklyn Bureau of Social Service, Conference on Personal Finance Law, The Empire State Chamber of Commerce, The New York State Bar Association, the Special Assistant to the Governor on Consumer Problems, the Banking Department and many other reliable organizations." (New York State Legislative Annual—1956, p. 452)

The Kansas statute which has been held below to violate the Federal Constitution and therefore to be invalid prohibits "debt adjusting" other than incidentally in the practice of law, and defines "debt adjusting" as follows (R. 2):

> "For the purpose of this act, 'debt adjusting' means the making of a contract, express, or implied with a particular debtor whereby the debtor agrees to pay a certain amount of money periodically to the person engaged in the debt adjusting business who shall for a consideration distribute the same among certain specified creditors in accordance with a plan agreed upon."

The questions of law involved in this appeal are whether the due process and equal protection clauses of the Fourteenth Amendment to the Federal Constitution and the clause of the Federal Constitution prohibiting impairment of obligation of contracts require that this Kansas statute prohibiting debt adjusting by laymen be held invalid. The attached brief of the applicant is addressed to these important constitutional questions on which the decision of this appeal must turn.

In the three-judge Court below, the Attorney General of the State of Kansas (one of the two defendants) took the position that he was not properly a defendant; therefore,

he did not address himself to the merits below. Furthermore, the case was tried and argued primarily on testimony as to what the plaintiff claimed he did in conducting his particular debt adjusting activities, not against the background of the evils which debt adjusting activities have generated on a nationwide basis. While the applicant understands that a brief will be submitted on behalf of appellants in this Court, the appellants' interest relates to their local Kansas statute. On the other hand, applicant has a broader interest which includes the evils of debt adjusting generally found in other parts of the country, and also includes the statutes of the numerous other states which have prohibited or which regulate the business of debt pooling by laymen as well as the power of the remaining states to legislate in this area in the future. The applicant respectfully suggests that such broader, national aspect warrants consideration by this Court.

The applicant, therefore, respectfully moves that it be granted leave to file the accompanying brief.

Respectfully submitted,

January 23, 1963.

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IN THE

Supreme Court of the United States

OCTOBER TERM, 1962

No. 111

WILLIAM M. FERGUSON, Attorney General for the State of Kansas, and KEITH SANBORN, County Attorney, for the County of Sedgwick, State of Kansas,

Appellants,

v.

FRANK C. SKRUPA, d/b/a Credit Advisors,

Appellee.

ON APPEAL FROM THE UNITED STATES DISTRICT COURT FOR THE DISTRICT OF KANSAS

BRIEF FOR NATIONAL BETTER BUSINESS BUREAU, INC., AS *AMICUS CURIAE*

The Interest of the *Amicus Curiae*

The interest of the *amicus curiae* is set forth in the foregoing motion for leave to file this brief. The long-standing interest of the *amicus* in this matter is shown by the bulletin concerning debt adjusting activities which it issued in 1955 (when such activities mushroomed) and which is printed in the Appendix hereto (p. A-1). The bulletin grew out of the many complaints against such activities which were received by the *amicus* and by the local Better Business Bureaus. The bulletin had wide-

spread circulation (about 22,000) which went mainly to organizations cooperating with or supporting the activities of the Better Business Bureaus (local and national); it formed the basis of an article criticizing debt adjusting activities which appeared in "Business Week" for August 6, 1955 (p. 96).

Proceedings to Date

The proceedings in the three-judge District Court will be set forth in the briefs of the parties and will not be repeated here. The pertinent part of the Kansas statute (Senate Bill No. 366, effective June 30, 1961; Kan. Gen. Stat. Ann. §21-2464 (Supp. 1961)) is quoted in the footnote below.* The majority opinion and the dissenting opinion in the District Court are reported in 210 F. Supp. 200 (D. Kansas 1961). The jurisdictional statement was filed May 9, 1962. The motion to affirm was filed June 7, 1962, and this Court noted probable jurisdiction on October 8, 1962.

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* An Act concerning the business of debt adjusting; making certain acts unlawful and prescribing penalties therefor.

Be it enacted by the Legislature of the State of Kansas:

Section 1. For the purpose of this act, "debt adjusting" means the making of a contract, express, or implied with a particular debtor whereby the debtor agrees to pay a certain amount of money periodically to the person engaged in the debt adjusting business who shall for a consideration distribute the same among certain specified creditors in accordance with a plan agreed upon. Whoever engages in the business of debt adjusting shall be guilty of a misdemeanor and upon conviction thereof shall be punished by a fine of not more than five hundred dollars ($500), or by imprisonment in the county jail not exceeding six (6) months, or by both such fine and imprisonment: Provided, That the provisions of this act shall not apply to those situations involving debt adjusting as herein defined incurred incidentally in the lawful practice of law in this state.

Summary of Argument

The majority of the three-judge District Court were clearly wrong in holding that the Kansas statute prohibiting debt adjusting by laymen was a violation of the due process clause of the Fourteenth Amendment.

The statute was a valid exercise of the police power of the State to correct the notorious multitude of evils and abuses attendant upon the debt adjusting activities of laymen. The statute also was the valid exercise of the power of the State of Kansas to regulate and confine to lawyers activities either constituting or closely akin to the practice of law.

Thirteen states (including Kansas) and a province of Canada have passed statutes prohibiting debt adjusting by laymen. Two states and the Province of Quebec have done so by declaring debt adjusting to constitute practice of the law. Seven additional states have regulated debt adjusting by laymen. This action by twenty states and a province of Canada in relation to debt adjusting would seem virtually conclusive that there are evils and abuses attendant upon debt adjusting by laymen which justify remedial legislative action.

The majority opinion below, although conceding (R. 129-30) that (a) "Debt adjustment by its very nature may lend itself to great abuses" and (b) "No doubt, the state can * * * even limit the business to certain classes of qualified persons.", held the statute unconstitutional in reliance on a decision of a court of intermediate appeal in Pennsylvania (*Commonwealth* v. *Stone*, 191 Pa. Super. 117, 155 A. 2d 453 (1959), *allocatur* refused by Pa. Sup. Ct.), which struck down a similar Pennsylvania statute and, in doing so, relied primarily on the majority opinion

in *Adams* v. *Tanner*, 244 U. S. 590 (1917). We submit that *Adams* v. *Tanner* was incorrectly decided and has since been overruled.

The majority opinion below rejected a later New Jersey decision upholding a similar New Jersey statute, *American Budget Corp.* v. *Furman*, 67 N. J. Super. 134, 170 A. 2d 63 (Ch. 1961), *aff'd per curiam*, 36 N. J. 192, 175 A. 2d 622 (1961). The New Jersey decision questioned the present validity of the holding of the majority in *Adams* v. *Tanner*, *supra*, and therefore refused to follow it. The minority opinion below rested on the New Jersey decision.

In *Adams* v. *Tanner*, *supra*, the majority struck down, as violative of the due process clause, a statute of the State of Washington prohibiting employment agencies from receiving fees from workers for finding them employment. There was a strong dissent by four Justices, Brandeis, Holmes, Clarke and McKenna.

In subsequent decisions this Court has expressly criticized the majority view in *Adams* v. *Tanner*, *e.g.*, *Lincoln Federal Labor Union* v. *Northwestern Iron & Metal Co.*, 335 U. S. 525 (1949); *Breard* v. *Alexandria*, 341 U. S. 622 (1951).

A review of the decisions of this Court, both before and after *Adams* v. *Tanner*, *supra*, relating to the due process clause and state police power, beginning with *Powell* v. *Pennsylvania*, 127 U. S. 678 (1888) through *Williamson* v. *Lee Optical Company*, 348 U. S. 483 (1955), will show that it is the reasoning in the dissent by Mr. Justice Brandeis in *Adams* v. *Tanner* which represents the law rather than that of the majority opinion, *i.e.*, that the issue is not whether the statute is characterized as prohibitory or regulatory, but whether the legislature could rationally have deemed its enactment to be appropriate to meet evils which it might believe to exist.

The majority in the District Court attempted to rest on the distinction between regulation and prohibition and said debt adjusting could be regulated but not prohibited. As stated above, the dissent in *Adams* v. *Tanner* rejects the distinction, 244 U. S., at p. 599. Many decisions of this Court also indicate the distinction is without foundation, *e.g.*, *Nebbia* v. *New York*, 291 U. S. 502 (1934), where this Court, by Mr. Justice Roberts, said (p. 528): "Certain kinds of business may be prohibited; and the right to conduct a business, or to pursue a calling, may be conditioned." However, the Kansas statute does not prohibit, but is regulatory, in that it permits the more than 3,000 lawyers in Kansas to engage in debt adjusting activities incident to the practice of the law.

The majority opinion below obviously proceeded on the unsound premise that the burden of establishing constitutionality was on the parties attempting to uphold the Kansas statute. This is contrary to well-settled doctrines of this Court enunciated from the *Sinking-Fund Cases*, 99 U. S. 700 (1878) to *Goldblatt* v. *Town of Hempstead*, 369 U. S. 590 (1962).

The plaintiff debt adjuster also claimed that the Kansas statute deprived him, a layman, of equal protection of the laws within the prohibition of the Fourteenth Amendment, presumably on the ground that lawyers were permitted to engage in debt adjusting activities as incidental to the practice of the law. Neither opinion below adverted to this contention of the plaintiff. It has long been held by this Court that a state may make reasonable classifications as to who may engage in specified activities based on its judgment as to the dangers to be guarded against. This is particularly so in cases relating to professional activities, *Semler* v. *Oregon State Board of Dental Examiners*, 294 U. S. 608 (1935).

The plaintiff also contended in his complaint that the statute impaired the obligation of contracts already entered into by him in violation of Article I, Section 10 of the Constitution. Neither opinion below mentioned this contention. It is well settled that if a state passes a statute in the proper exercise of the police power, then any impairment of the obligation of contracts incident thereto cannot invalidate the statute. An early such holding is *Manigault* v. *Springs*, 199 U. S. 473 (1905).

The Kansas statute is supported by another independent ground, that is, that it regulates activities which constitute or are akin to the practice of the law. A statute of Massachusetts declaring debt adjusting to be the practice of the law was upheld by the Supreme Judicial Court, *Home Budget Service* v. *Boston Bar Assn.*, 335 Mass. 228, 139 N. E. 2d 387 (1957). The opinion by Mr. Chief Justice Wilkins describes the activity of debt adjusting point by point and shows how such activity is a phase of the practice of the law. The Kansas courts have passed upon similar activities and held them to constitute the practice of the law, *Depew* v. *Wichita Association of Credit Men*, 142 Kan. 403, 49 P. 2d 1041 (1935), *cert. denied*, 297 U. S. 710 (1936). Furthermore, the record shows that the plaintiff debt adjuster was in effect held by a Kansas court to be engaged in the unauthorized practice of the law in February, 1961 (R. 124-5). In *McCloskey* v. *Tobin*, 252 U. S. 107 (1920), this Court upheld a Texas statute prohibiting laymen from soliciting employment to prosecute, defend, present or collect any claim. The Court, through Mr. Justice Brandeis, said (p. 108): "Regulation which aims to bring the conduct of the business into harmony with ethical practice of the legal profession, to which it is necessarily related, is obviously reasonable."

ARGUMENT

Statement of Background

Following World War II and the Korean conflict, with the mounting volume of consumer installment credit,* many individuals, particularly in urban areas, contracted debts beyond their ability to pay. This resulted in the mushroom growth of an activity known by various names, such as "debt adjusting", "debt pooling", "prorating", "debt managing", "credit counseling", "budget assistance" and "funding agencies". The activity was almost invariably engaged in by laymen. It consisted of the debt adjuster soliciting the business of overextended individuals and having them contract to pay to the debt adjuster a stipulated sum of money periodically, out of what was estimated to be left over from the individual's income after paying living expenses, for distribution by the debt adjuster to creditors shown on a list furnished by the individual, after deducting the consideration to be paid by the individual to the debt adjuster, according to such schedule as the debt adjuster works out with the creditors of the individual.

Any individual, corporation or partnership could engage in debt adjusting activities, whether of good or bad or no reputation. The debt adjuster could furnish his client with no protection against creditors who would not accept the program adopted and who, notwithstanding the program, could bring legal proceedings against the client, garnishee his wages or repossess any chattel under conditional sale or chattel mortgage. So far as the creditors of the client were concerned, there was no assurance that they were treated equitably in accordance with their secured interests or pro rata in accordance with unsecured claims.

---

* The tremendous increase in the amount of outstanding consumer credit in the United States is shown in an article in the Wall Street Journal of January 21, 1963, p. 1, last column. Whereas the amount of such credit was $5,700,000,000 in 1945, it had increased to $38,800,000,000 in 1955 and to $61,500,000,000 in 1962.

The debt adjuster could not legally advise regarding the validity of claims, secured or unsecured, nor whether other methods of arranging and settling their debts would be more advantageous, such as recourse to debtor and creditor statutes or to wage earner adjustments under Chapter XIII of the Bankruptcy Act. If there were any attempt to give such advice, it would clearly constitute the unauthorized practice of the law by laymen.

Nevertheless, the forms of advertising used implied to nonprofessional people (mostly wage earners of small means who are unacquainted with legal procedures) that there was some legal status for the debt adjusting plans, such as "Forget your debts", "Rid yourself of the worries and troubles of all your creditors", "Pay us what you can afford", "Embarrassing calls, unpleasant letters, first-of-the-month worries are all a thing of the past", "We will prove to you that we can get you out of debt at a price you can afford and that will satisfy your creditors", "Stop garnishments", and "Confidentially we restore credit", all over-optimistic promises which could ordinarily lead only to further distress on the part of the impecunious debtor who was beguiled by them.

Further, there were advertising statements falsely implying the debt adjuster furnished financial assistance, such as "Bills paid for you", "We pay them for you", "Do you need financial assistance and have no collateral?", "Pay your bills without borrowing with a single payment", and "No interest, no co-signers, no security needed, no reference check".* Some of the advertisements appeared in classified columns under the heading "Loans". Yet debt adjusters provide no financial assistance and make no advances to their clients. On the contrary, their clients often finance the debt adjusters through payment of the fees charged. The agreement between the debt adjuster and his client often permits the debt adjuster to deduct his fee from the client's initial payments, thus postponing

* The advertising of the plaintiff in the present case has the same incorrect implications (see R. 23).

payments received by the creditors. Frequently under these contracts, if a client drops the program before completion, the debt adjuster keeps his full fee and nothing, or very little, is paid to the creditors. Usually the debt adjustment scheme simply increases the debts of the client without protecting him from his creditors.

There is, of course, absent regulation no limitation on the fees a debt adjuster may charge. Some make charges up to 35% or more of total indebtedness and there is often a charge for each creditor or charges for checks written. Studies indicated that a very small percentage of clients of debt adjusters carried through their programs. There have been a number of cases of embezzlement by debt adjusters, fly-by-nighters who would operate in one area for a short time, shut up shop, and move somewhere else, probably under another name. Obviously evils will spring up when any persons, without discrimination, regulation or prescribed ethical standards, are permitted to handle and disburse the funds of others.

The material showing the foregoing background facts is cited below and is in small part reproduced in the Appendix hereto.

In February 1955 the St. Louis Better Business Bureau made public a study through questionnaires submitted to several hundred members in the financial, or retail selling, field and reported the following results (App. pp. A-9, A-10):

	Yes	No
Do Debt Adjusters Serve a Useful Purpose?	10%	90%
Do You Accept Agreements From Debt Adjusters?	30%	70%
Do Debt Adjusters Pay Promptly?	12½%	87½%
Do Debt Adjusters Usually Pay Off the Entire Amount?	0	100%
Are Clients Excessively Debt Ridden?	67%	33%

Another survey from the standpoint of creditors was made in March 1962 by the Kansas City Better Business Bureau (16 Personal Finance L.Q. Report 116 (1962)). The questionnaire was sent to banks, installment sales firms and merchants. One hundred and nine answered as follows:

> Question 1: In your opinion, have the services of debt pro-raters or adjusters been useful or beneficial?—95% replied no.
>
> Question 2: Do you accept agreements to represent your debtors, from all of them? If not, which do you refuse?—96% declined to accept such arrangements.
>
> Question 3: In your experience, do they pay you as promptly as they collect from their debtors?—70% replied no.
>
> Question 4: When and if you deal with them, do they usually continue the payment schedule until the entire balance is paid?—98% replied no.

A study made by the Chairman of the Department of Business Administration of Upsala College which was published in the official organ of the National Retail Credit Association concluded that debt adjusters should be outlawed entirely "as a social and economic malignancy that no amount of legislation can make benign" (Pearson, *Pro-Rater Plague;* Credit World, November 1955, at p. 13).

A study of debt pooling activities by New York Attorney General Javits resulted in a recommendation to outlaw the activity except when conducted by non-profit agencies or members of the Bar (10 Personal Finance L. Q. Report 36 (1956)).

Governor Harriman of New York condemned the activity of debt pooling in his official memorandum when he

signed the New York statute making the practice a misdemeanor. New York State Legislative Manual, 1956, p. 454 (reprinted in Appendix hereto, p. A-15).

Debt pooling or adjusting has been officially condemned by the principal labor unions. An article in the AFL-CIO American Federationist for September 1961 (Perlis, *The Debt-Pool Sharks*), quotes (p. 13) from a statement adopted by the Executive Council of the AFL-CIO on February 21, 1961 declaring "the debt adjustment business, regulated or unregulated, is not economically or socially desirable as a commercial activity and should be eliminated." The full AFL-CIO statement appears in the Appendix hereto, p. A-17).

An article condemning debt pooling appears in other publications of labor organizations: *e.g.* Margolis, *Beware Debt Poolers; Use your Credit Union*, Labor's Daily, May 13, 1955; The Machinist, May 19, 1955; The C.I.O. News, June 6, 1955.

The practice of debt pooling has been denounced in the official publication of the National Legal Aid Association, Bloom, *Debt Adjustment—Meanest Racket Out*, 13 Brief Case 99 (1955).

Debt adjustment has also been condemned in general periodicals. *Those Schemes to Help you Pay Your Bills*, Changing Times, September 1955, p. 29; *Debt Consultants, a New Phenomenon of the Boom*, Time Magazine, March 5, 1956, p. 96; *Warning: The Debt "Adjusters" are Back*, Good Housekeeping, February 1959, p. 121; *Debt Pooling: How not to get out of Debt*, Coronet, October 1961.

Debt pooling or adjusting by laymen has also been condemned by the New York State Bar Association, not merely as unauthorized practice of the law, but for the evils attendant upon the activity (21 Unauthorized Prac-

tice News 63, December 1955, a publication of the American Bar Association).

A study of the activity of debt adjusting by Dale Tooley of the University of Colorado School of Law concludes that the State of Colorado should outlaw debt adjusters because of the evils to the public attendant on their activities (22 Unauthorized Practice News 29, December 1956).

Consequently, as will appear below, thirteen states and the Province of Quebec have outlawed debt adjusting by laymen. Seven additional states have licensed debt adjusting and thereby "regulate" the activity. This latter method of restraint has been ineffectual because it has given debt adjusting standing in the eyes of the public and regulation has not stopped the abuses (American Federationist, September 1961, p. 13; Statement of New York Attorney General Javits, 10 Personal Finance L. Q. Report 36 (1956); Statement by New York Governor Harriman, Appendix hereto, p. A-15).

Not only would the evils and dangers to the public set forth above seem amply to warrant exercise of the police power of the states, or at least furnish a rational basis for such action, but there is a separate ground supporting the legislation, namely, the regulation by the states of the practice of the law or activities closely related thereto.

The debt adjuster receives confidential information regarding the financial affairs of his client. He looks over the list of the various categories of his debts with a view to analyzing what can be done about them, he negotiates with his client's creditors, at least to the extent of attempting to persuade them to agree to a

schedule of payments. He even negotiates with lawyers representing creditors.

The debt adjuster either advises his client regarding the legality of the various claims against him and the validity of any security therefor under the statutes of the state* and regarding the possibility of employing debtor-creditor laws of the state or the debt adjustment provisions of the Bankruptcy Act, particularly wage earner adjustments under Chapter XIII, or does not advise him regarding any of these things. If he does advise him, then clearly he is practicing law. If he does not advise him, the client is not receiving the advice he should have.

In this situation it would seem to be clearly within the power of the state through the legislature or the courts to confine such activities to members of the bar. As a consequence of doing so, those performing debt adjustment services being lawyers are subject to all the restrictions against solicitation, advertisement, commingling of funds and other proscribed unprofessional conduct contained in the Canons of Ethics.

The Kansas statute has limited debt adjustment not only to lawyers but to lawyers incidentally to the practice

* There are complicated statutes in all the states which must be complied with in order to make various types of claims and security therefor valid. Kansas statutes on this subject include: Kan. Gen. Stat. Ann. §§16-401 to -426 (Supp. 1961) (Consumer Loan Act which regulates the making of installment loans aggregating less than $2,100); §§16-501 to -514 (Supp. 1961) (Sales Finance Act regulating the retail installment sale of goods); §§58-301 to -318 (Supp. 1961) (regulates Chattel Mortgages and Conditional Sales); §§8-126, 135 (Supp. 1961) (Motor Vehicle Registration Act which, among other things, regulates liens or encumbrances on motor vehicles); §§60-3504 to -3505 (1949) (list the exempt property of families and of individuals).

of the law. The effect of the other statutes prohibiting debt adjustment by laymen is substantially the same (except for Oklahoma), although some of them do not limit the debt adjusting activities of lawyers to those incidental to the practice of the law.

In his complaint, the plaintiff also contended that the Kansas statute violated the Kansas Constitution because, as he claimed, the subject of the statute was not clearly expressed in its title. While this contention also does not appear to us to be sound (the title refers to debt adjusting and the statute deals only with debt adjusting), it is outside the area of this brief which will discuss only the issues relating to the Federal Constitution and we shall accordingly leave it to the appellants to deal with this contention relating to the Kansas Constitution.

POINT I

The burden of proof is on those claiming unconstitutionality of a statute.

A basic error of the majority in the District Court is the assumption obviously made by them that the burden of establishing constitutionality was on the parties attempting to uphold the Kansas statute. This is contrary to well-settled principles. One of the early authorities to the contrary is the *Sinking-Fund Cases*, 99 U. S. 700 (1878) where the Court said (p. 718):

> "Every possible presumption is in favor of the validity of a statute, and this continues until the contrary is shown beyond a rational doubt. One branch of the government cannot encroach on the domain of another without danger. The safety of our institutions depends in no small degree on a strict observance of this salutary rule."

Perhaps the leading case on this subject is *O'Gorman & Young* v. *Hartford Ins. Co.*, 282 U. S. 251, 257 (1931), in which the Court upheld a New Jersey statute regulating the compensation of insurance agents. Justice Brandeis wrote for the majority (pp. 257-258):

> "[T]he presumption of constitutionality must prevail in the absence of some factual foundation of record for overthrowing the statute. It does not appear upon the face of the statute, or from any facts of which the court must take judicial notice, that in New Jersey evils did not exist in the business of fire insurance for which this statutory provision was an appropriate remedy. The action of the legislature and of the highest court of the State indicates that such evils did exist. The record is barren of any allegation of fact tending to show unreasonableness."

In a case involving the reasonableness of legislative action, *i.e.*, a zoning ordinance (*Goldblatt* v. *Town of Hempstead*, 369 U. S. 590 (1962)), the Court recently said, by Mr. Justice Clark (p. 596):

> "Our past cases leave no doubt that appellants had the burden on 'reasonableness'. *E.g.*, *Bibb* v. *Navajo Freight Lines*, 359 U. S. 520, 529 (1959) (exercise of police power is presumed to be constitutionally valid); *Salsburg* v. *Maryland*, 346 U. S. 545, 553 (1954) (the presumption of reasonableness is with the State); *United States* v. *Carolene Products Co.*, 304 U. S. 144, 154 (1938) (exercise of police power will be upheld if any state of facts either known or which could be reasonably assumed affords support for it)."

POINT II

The statute does not violate the due process clause of the Fourteenth Amendment.

In deciding that the Kansas statute was unconstitutional, as a violation of the due process clause of the Fourteenth Amendment, the majority in the District Court relied on a decision of a court of intermediate appeal of the Commonwealth of Pennsylvania (*Commonwealth* v. *Stone*, 191 Pa. Super. 117, 155 A. 2d 453 (1959), *allocatur* refused by Pa. Sup. Ct.). That decision struck down as violative of the Fourteenth Amendment a Pennsylvania statute very similar to the Kansas statute in question here. The Pennsylvania court relied primarily on *Adams* v. *Tanner*, 244 U. S. 590 (1917) which case held violative of the due process clause a statute of the State of Washington prohibiting employment agencies from receiving fees from workers for finding them employment. There was a strong dissent in *Adams* v. *Tanner* by four Justices, Brandeis, Holmes, Clarke and McKenna. In a separate dissenting opinion (p. 597) Mr. Justice McKenna stated:

> "that under the decisions of this court—some of them so late as to require no citation or review—the law in question is a valid exercise of the police power of the State, directed against a demonstrated evil."

The case was criticized at the time outside the Court (Note, 27 Yale L. J. 134-135, 1917).

It will be shown that the reasoning of the dissenting opinion, rather than that of the majority opinion, in the

Adams case is the applicable law today. Since this is so, the Pennsylvania case is plainly wrong and the majority opinion below, resting explicitly on the Pennsylvania case, is likewise plainly wrong. We submit that the collapse of *Adams* v. *Tanner* as an authority should be determinative of this appeal in that it removes the basis on which the Pennsylvania decision and, in turn, the decision below rested and therefore leaves the decision below without support in law.

Adams v. *Tanner* has not merely been overruled *sub silentio*. In *Lincoln Federal Labor Union* v. *Northwestern Iron & Metal Co.*, 335 U. S. 525 (1949), Mr. Justice Black writing for the majority said (p. 535): "Our holding and opinion in *Olsen* v. *Nebraska* [313 U. S. 236 (1941)] clearly undermined *Adams* v. *Tanner*."

Again, in *Breard* v. *Alexandria*, 341 U. S. 622 (1951), the Court, by Mr. Justice Reed, said (pp. 631-2) that *Adams* v. *Tanner* was not in as strong a position today as it was earlier, citing the *Olsen* and *Lincoln Union* cases.

The majority opinion in *Adams* v. *Tanner* was further criticized in a recent three-judge District Court decision upholding a Federal statute prohibiting trading in onion futures against an attack from the standpoint of the due process clause, *Chicago Mercantile Exchange* v. *Tieken*, 178 F. Supp. 779 (N. D. Ill. 1959). The Court said (p. 785):

> "Nor does it suffice to argue, as the plaintiffs do, that the due process clause proscribes the prohibition of a business which is lawful, useful, and essentially harmless, even though it is attended by abuses. This argument might have been forceful in a bygone era of constitutional interpretation See *Adams* v. *Tanner*, 1917, 244 U. S. 590, 37 S. Ct

662, 61 L. Ed. 1336, criticized, 27 Yale L. J. 134 (1917). However, it is without force today. *Lincoln Federal Labor Union, etc.* v. *Northwestern Iron & Metal Co.*, 1949, 335 U. S. 525, 529, 69 S. Ct. 251, 93 L. Ed. 212.".

The minority opinion in the Court below also calls attention to the fact that the Pennsylvania decision relied on by the majority in turn relies on *Adams* v. *Tanner* and that that case does not represent the present law, saying (R. 132-3):

> "I am more impressed by the reasoning of the Superior Court of New Jersey in *American Budget Corp.* v. *Furman, supra,* than by that of the Superior Court of Pennsylvania in *Commonwealth* v. *Stone,* 191 Pa. Super. 117, 155 A. 2d 453. The Pennsylvania court leans heavily on *Adams* v. *Tanner,* 244 U. S. 590. As the New Jersey court points out, quoting *Staten Island Loaders, Inc.* v. *Waterfront Commission,* 117 F. Supp. 308 (D.C. S.D. N.Y. 1953), * * * the U. S. Supreme Court has withdrawn from this extreme [fol. 223] view of the Fourteenth Amendment '* * * and has made it increasingly clear that it is not for the judiciary to decide whether the legislature has chosen that best remedy to meet an evil * * *.'"

The reasoning of the New Jersey case relied on in the dissenting opinion below, upholding a statute similar in effect to the Pennsylvania statute and the Kansas statute, is clearly on a more sound basis than that of the Pennsylvania Superior Court in the Pennsylvania case of *Commonwealth* v. *Stone, supra.* The New Jersey decision points out that the majority opinion in *Adams* v. *Tanner* does not represent the law today. *American Budget Corp.* v. *Furman,* 67 N. J. Super. 134, 170 A. 2d 63 (Ch. 1961), *aff'd per curiam,* 36 N. J. 129, 175 A. 2d 622 (1961).

The majority opinion in the instant case was criticized in a recent law review note and the author stated his opinion that it should be reversed (University of Kansas Law Review, Volume 10, p. 447 (1962)).

The holding in *Adams* v. *Tanner* was to the effect that a statute could prohibit a business or an activity only if it was inherently vicious and harmful; that otherwise evils which might develop in many or most situations involving the prosecution of a business or activity could be dealt with only by regulating the business and activity and not by prohibiting it. In the present case, limitation of debt adjusting to lawyers is a regulation of the activity and not a prohibition of it.

However, if the statute be assumed to be a prohibition, the authorities establish beyond question that the law now is that, when a legislature determines that substantial evils exist in connection with the pursuit of a business or activity, it is for the legislature to determine whether such evils should be dealt with by regulation of the business or activity or by the prohibition thereof. If it appears that the legislature reasonably could have thought that prohibition was the desirable remedial method, then that was a permissible exercise of the police power of the state whether or not the courts agree with the wisdom of the measure adopted by the legislature. Under such legal principles, the legislature of Kansas had the right to legislate as it did and its action could not be found to be in violation of the due process clause of the Fourteenth Amendment.

A review of the cases on this subject shows that *Adams* v. *Tanner* is out of line with the fundamental principles which have been enunciated by this Court both before and after that decision and that the dissent by Mr. Justice Brandeis in that case represents the view which the Court has since followed.

Since at least as early as 1888 this Court has upheld, against a challenge from the standpoint of the due process clause, state statutes prohibiting carrying on of selected activities where there was shown or could be assumed to be a reason for doing so in the public interest. The prohibition may have been absolute or limited under the statutes passed on by the Court.

Powell v. *Pennsylvania,* 127 U. S. 678 (1888). (Upheld Pennsylvania statute prohibiting manufacture or sale of oleomargarine.)

The Court, by Mr. Justice Harlan, said (p. 686):

"The legislature of Pennsylvania, upon the fullest investigation, as we must conclusively presume, and upon reasonable grounds, as must be assumed from the record, has determined that the prohibition * * * will promote the public health, and prevent frauds in the sale of such articles. If all that can be said of this legislation is that it is unwise, or unnecessarily oppressive to those manufacturing or selling wholesome oleomargarine, as an article of food, their appeal must be to the legislature, or to the ballot-box, not to the judiciary."

Booth v. *Illinois,* 184 U. S. 425 (1902). (Upheld Illinois statute making it a crime to sell or buy grain f ures.)

The Court, by Mr. Justice Harlan, said (p. 429):

"The argument then is, that the statute directly forbids the citizen from pursuing a calling which, in itself, involves no element of immorality, and therefore by such prohibition it invades his liberty as guaranteed by the supreme law of the land. Does this conclusion follow from the premise stated? Is it true that the legislature is without power to forbid or suppress a particular kind of business, where such business, properly and honestly con-

ducted, may not, in itself, be immoral? We think not. A calling may not in itself be immoral, and yet the tendency of what is generally or ordinarily or often done in pursuing that calling may be towards that which is admittedly immoral or pernicious. If, looking at all the circumstances that attend, or which may ordinarily attend, the pursuit of a particular calling, the State thinks that certain admitted evils cannot be successfully reached unless that calling be actually prohibited, the courts cannot interfere, unless, looking through mere forms and at the substance of the matter, they can say that the statute enacted professedly to protect the public morals has no real or substantial relation to that object, but is a clear, unmistakable infringement of rights secured by the fundamental law." *Mugler* v. *Kansas*, 123 U. S. 623, 661; *Minnesota* v. *Barber*, 136 U. S. 313, 320; *Brimmer* v. *Rebman*, 138 U. S. 78; *Voight* v. *Wright*, 141 U. S. 62."

Otis v. *Parker*, 187 U. S. 606 (1903). (Upheld California statute declaring void all margin sales of corporate shares.)

The Court, by Mr. Justice Holmes, said (p. 609):

"If the State thinks that an admitted evil cannot be prevented except by prohibiting a calling or transaction not in itself necessarily objectionable, the courts cannot interfere, unless, in looking at the substance of the matter, they can see that it 'is a clear, unmistakable infringement of rights secured by the fundamental law.' *Booth* v. *Illinois*, 184 U. S. 425, 429."

Murphy v. *California*, 225 U. S. 623 (1912). (Upheld ordinance prohibiting commercial billiard halls, except those maintained solely for use of guests in a hotel of more than 25 rooms.)

Rast v. *Van Deman & Lewis Co.*, 240 U. S. 342 (1916). (Upheld Florida statute imposing prohibitory license tax on use of profit sharing coupons and trading stamps.)

The Court said, by Mr. Justice McKenna (p. 364):

> "It is trite to say that practices harmless of themselves may, from circumstances, become the source of evil or may have evil tendency. *Murphy* v. *California*, 225 U. S. 623."

And again at page 368:

> "* * * we have shown that the business schemes described in the bill are not protected from regulation or prohibition by the Constitution of the United States."

Roschen v. *Ward*, 279 U. S. 337 (1929). (Upheld a New York statute making it unlawful to sell eyeglasses, unless a physician or optometrist is in charge and in personal attendance, the expense of which effectively prohibited plaintiff's business.)

Mr. Justice Holmes, speaking for a unanimous Court, said (p. 339):

> "Moreover, as pointed out below, wherever the requirements of the Act stop, there can be no doubt that the presence and superintendence of the specialist tend to diminish an evil. A statute is not invalid under the Constitution because it might have gone farther than it did, or because it may not succeed in bringing about the result that it intends to produce."

Nebbia v. *New York*, 291 U. S. 502 (1934). (Upheld a New York law establishing minimum prices for milk.)

The Court, by Mr. Justice Roberts, said (p. 528):

> "Certain kinds of business may be prohibited; and the right to conduct a business, or to pursue a calling, may be conditioned."

There follows in the above opinion a footnote listing cases upholding statutes prohibiting businesses and limiting businesses to qualified persons. It is noteworthy that in this case it was the *dissenting* opinion by Mr. Justice McReynolds which cited *Adams* v. *Tanner* (291 U. S. at p. 546).

> *Daniel* v. *Family Insurance Co.*, 336 U. S. 220 (1949). (Upheld a South Carolina statute prohibiting undertakers from serving as life insurance agents, and vice versa.)

Mr. Justice Murphy, speaking for a unanimous Court, said (p. 224):

> "We cannot say that South Carolina is not entitled to call the funeral insurance business an evil. Nor can we say that the statute has no relation to the elimination of those evils. There our inquiry must stop."

> *Breard* v. *Alexandria*, 341 U. S. 622 (1951). (Upheld ordinance prohibiting door-to-door solicitation of magazine subscriptions or purchases of merchandise without invitation from the home owner.)

While this ordinance did not prevent solicitation of magazine subscriptions or sales of merchandise by publishers or wholesalers by mail and other means, it effectively put out of business the individuals employed in door-to-door solicitation. Mr. Justice Reed, delivering the

majority opinion, said as to this aspect of excluding these individuals from the business (p. 631):

> "All regulatory legislation is prohibitory in that sense."

and again, referring to *Adams* v. *Tanner* and another case (p. 632):

> "Furthermore, neither case is in as strong a position today as it was * * *."

Staten Island Loaders v. *Waterfront Commission*, 117 F. Supp. 308 (S.D.N.Y. 1953), *aff'd sub nom.*, *Linehan* v. *Waterfront Commission*, 347 U. S. 439 (1954). (Upheld New York and New Jersey statutes prohibiting the occupation of public loaders in New York Harbor.)

Williamson v. *Lee Optical Company*, 348 U. S. 483 (1955). (Upheld an Oklahoma statute making it unlawful for anyone except optometrists and ophthalmologists to fit, duplicate or replace eyeglass lenses without prescription.)

Chicago Mercantile Exchange v. *Tieken*, 178 F. Supp. 779 (N. D. Ill. 1959). (Upheld a federal statute prohibiting trading in onion futures against attack under the Fifth Amendment.)

It thus seems clear that the Kansas statute in prohibiting the activity of debt adjusting to laymen is well within the area of permissible exercise of the police power as determined by this Court over the years, with few exceptions which no longer represent the law.

It should be noted that the rigid distinction attempted by the majority in the District Court between regulation and prohibition is unsound and has today no validity. Mr. Justice Brandeis pointed this out in his dissent in *Adams*

v. *Tanner, supra.* After citing cases upholding prohibition of businesses, some of which have been cited above, he said (244 U. S. p. 599):

> "These cases show that the scope of the police power is not limited to regulation as distinguished from prohibition."

However, the Kansas statute does not prohibit, but is regulatory in that it leaves the opportunity to the lawyers in Kansas to engage in debt adjusting activities incident to the practice of the law. There are over 3,000 lawyers in Kansas (1961 Lawyer Statistical Report of American Bar Foundation). Hence the legislature limited those who may participate in the activities to those that it believed qualified.

Certainly the evils and dangers to the public set forth in the statement of background above are ample justification for a state legislature to determine that it was necessary in the public interest to enact a statute prohibiting laymen from the activity and limiting it to activities incident to the practice of the law. The majority opinion below concedes (and the concession should be decisive in this case):

> "Debt adjustment by its very nature may lend itself to great abuses and because of this the state has power to regulate it to the end that its citizens may not be overreached by unscrupulous persons. No doubt, the state can, by proper regulations, set up standards and qualifications, *and even limit the business to certain classes of qualified persons.*" (Italics added) (R. pp. 129-130).

The dissenting opinion below points out "that debt adjustment is a business affecting the public interest is not

questioned. It has been the subject of legislation in many states."*

The existence of similar legislation in other states is a strong, if not conclusive, indication that there are evils justifying the legislation, *e.g.*, the Court stated in *Daniel* v. *Family Insurance Co.*, 336 U. S. at p. 223:

> "The South Carolina legislature is not alone in seeing evils in this kind of insurance, and in invoking its police powers to combat them. See the similar provisions in N. Y. Insurance Law, §165(c); Fla. Stat. (1941), §639.02; Ga. Code Ann. §56-9920; Page's Ohio General Code, §666 (1946) (see *Robbins* v. *Hennessey*, 86 Ohio St. 181, 99 N.E. 319); Md. Ann. Code, Art. 48A, §110 (1939). And see the summary of critical arguments in Business Week, October 20, 1945, pp. 48, 51."

Again, in *Tanner* v. *Little*, 240 U. S. 369 (1916), the Court, in upholding a prohibitory license tax on the use of profit sharing coupons and trading stamps, said, through Mr. Justice McKenna (pp. 385-6):

> "Our present duty is to pass upon the statute before us, and if it has been enacted upon a belief of evils that is not arbitrary we cannot measure their extent against the estimate of the legislature. *McLean* v. *Arkansas*, 211 U. S. 539. Such belief has many examples in state legislation and, we have seen, it has persisted against adverse judicial opinion. If it may be said to be a judgment from experience as against a judgment from speculation, certainly, from its generality, it cannot be declared to be made in mere wantonness."

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* The Pennsylvania court in *Commonwealth* v. *Stone*, *supra*, relied upon the incorrect statement made in the brief of the defendant in that case "that it appears that the statute is unique and original in its prohibition." 155 A. 2d at p. 456.

Twelve states in addition to Kansas have laws prohibiting the activity of debt adjusting. They are Florida, Georgia, Maine, Massachusetts, New Jersey, New York, Ohio, Oklahoma, Pennsylvania, Virginia, West Virginia and Wyoming; also the Province of Quebec.*

Massachusetts, Virginia and Quebec prohibit debt pooling by laymen by declaring that it constitutes the practice of the law. In the other jurisdictions (except for Oklahoma) lawyers are exempted from the prohibition of the statute or are permitted to engage in the activity incident to the practice of the law. Several of the jurisdictions make a few other exceptions for nonprofit or welfare agencies. The statute of West Virginia is not a prohibition on its face, but is a prohibition in fact since it permits the activity only where the fee is less than 2% of the money collected and where there is no solicitation.

Seven other states have laws attempting to license and regulate the activity of debt pooling, although it is believed ineffectively.** However the existence of the statutes in these seven states shows their recognition of the need for corrective measures.

The fact that the plaintiff debt adjuster in the present case claimed that he did not engage in some of the evils

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* Fla. Stat. Ann. §§559.10-.13 (1962); Ga. Code Ann. §§84-3601-3603 (Supp. 1961); Me. Rev. Stat. Ann. ch. 137, §§51-53 (Supp. 1961); Mass. Ann. Laws ch. 221, §46 C (Supp. 1961); N. J. Stat. Ann. 2A:99 A-1 to -4 (Supp. 1962); N. Y. Penal Law §§410-412; Ohio Rev. Code Ann. §§4710.01-.99 (1958); Okl. Stat. Ann. tit. 24, §§15-18 (Supp. 1962); Pa. Stat. Ann. tit. 18, §4899 (Supp. 1961); Va. Code Ann. §54-44.1 (1958); W. Va. Code Ann. §6112(4) (1961); Wyo. Stat. Ann. §§33-190 to -192 (1957); Que. Stat. 2 & 3 Eliz. 2, c. 59, §§95, 100, 102 (1954).

** Cal. Fin. Code Ann. §§12200-12331; Ill. Ann. Stat. ch. 16½, §§251-272 (Supp. 1962); Mich. Stat. Ann. §§23.630 (1)-(18) (Supp. 1961); Minn. Stat. Ann. §§332.04-.11 (1947 and 1961 Supp.); Ore. Rev. Stat. §§697.610-992 (1961); R. I. Gen. Laws §§5-42-1 to -9 (Supp. 1962); Wis. Stat. Ann. §218.02 (1957).

found in debt adjusting activities is beside the point.* If the evils often attend debt adjusting activities, the legislature may exercise the police power even though there are some individuals or organizations engaged in the activities which may be subject to less criticism than others (see *Powell* v. *Pennsylvania*, 127 U. S. 678, 684-5 (1888)). As shown by the references to the record appearing in the footnote to the first sentence of this paragraph, the plaintiff's testimony and his solicitation material demonstrate the existence of various of the evils hereinbefore mentioned. For example, the solicitation material implies that the plaintiff has some official status to remove "debt worries". He does not disclose that he requires "no security" and "no co-signers" because he lends no money. Nor does he disclose that he cannot remove "debt worries" except to the extent that creditors agree to the proposals he makes, and that he can furnish no "peace of mind" to the debtor without agreement of the creditors. The hard-pressed wage earner must inevitably be misled by the rosy implications of this solicitation material as to what the plaintiff would do for him to remove his "debt worries" and give him "peace of mind".

* However, the record shows the plaintiff's activities included many of the evils objected to: He discusses claims against his client with creditors' attorneys (R. 14); sometimes discusses reduction in the claim (R. 15); payments are not made pro rata to creditors, but depend on pressure (R. 15); he assumes the validity of any conditional sales agreements (R. 16); he does not discuss with his client any advantages of the use of state statutes or the Bankruptcy Act (R. 21); he gives no advice as to usury or other possible defenses (R. 30); the plans do not prevent garnishment (R. 96); many plans failed before they were performed (R. 106); his advertisements were among the type constituting evils sought to be prevented, *e.g.*: "Bills pressing?" "If installment payments or past due bills are troubling you, let us consolidate and arrange to pay all your bills, past due or not, with one low payment you can afford." "No security—no co-signer." "Debt worries???" (R. 23); "You have only one payment to make." "Your credit improves with regular payments." "Regular payments avoid garnishments and wage assignments." "Most important—you have peace of mind." (R. 118).

POINT III

The statute does not violate the equal protection clause of the Fourteenth Amendment.

The plaintiff debt adjuster claimed that the Kansas statute deprived him, a layman, of equal protection of the laws within the prohibition of the Fourteenth Amendment, presumably on the ground that it permits lawyers to engage in debt adjusting activities as incidental to the practice of the law. Neither the majority nor the minority opinion below adverted to this contention of the plaintiff. There is plainly nothing to it because it was well within the province of the Kansas legislature to make the classification which it did.

It has long been held by this Court that a state legislature may make reasonable classification as to who may engage in activities based on its judgment as to dangers to be guarded against.

> *Lindsley* v. *Natural Carbonic Gas Co.*, 220 U. S. 61 (1911). (Upheld a New York statute which prohibited pumping carbonic acid gas *from certain wells.*)

The plaintiff attacked the statute as denying equal protection because such gas could be pumped from other wells without violating the statute. The Court, through Mr. Justice Van Devanter laid down in this leading case the rules which demonstrate that the plaintiff has no equal protection argument in the present case. The Court said, in rejecting the equal protection contention (pp. 78-79):

> "The rules by which this contention must be tested, as is shown by repeated decision of this court, are these: 1. The equal protection clause

of the Fourteenth Amendment does not take from the State the power to classify in the adoption of police laws, but admits of the exercise of a wide scope of discretion in that regard, and avoids what is done only when it is without any reasonable basis and therefore is purely arbitrary. 2. A classification having some reasonable basis does not offend against that clause merely because it is not made with mathematical nicety or because in practice it results in some inequality. 3. When the classification in such a law is called in question, if any state of facts reasonably can be conceived that would sustain it, the existence of that state of facts at the time the law was enacted must be assumed. 4. One who assails the classification in such a law must carry the burden of showing that it does not rest upon any reasonable basis, but is essentially arbitrary."

McGowan v. *Maryland*, 366 U. S. 420 (1961). (Upheld a Maryland statute prohibiting generally the sale on Sunday of merchandise, but *excepting a number of types of merchandise*.)

The classification was assailed as a violation of the equal protection clause. The Court, through Mr. Chief Justice Warren, said (pp. 425-6):

"The standards under which this proposition is to be evaluated have been set forth many times by this Court. Although no precise formula has been developed, the Court has held that the Fourteenth Amendment permits the States a wide scope of discretion in enacting laws which affect some groups of citizens differently than others. The constitutional safeguard is offended only if the classification rests on grounds wholly irrelevant to the achievement of the State's objective. State legislatures are presumed to have acted within their constitutional power despite the fact that, in practice, their laws result in some inequality. A statu-

tory discrimination will not be set aside if any state of facts reasonably may be conceived to justify it."

Semler v. *Oregon State Board of Dental Examiners*, 294 U. S. 608 (1935). (Upheld an Oregon statute providing for revocation of licenses of *dentists* who advertise in a specified unethical manner.)

The Court, by Mr. Chief Justice Hughes, said (p. 610):

"Nor has plaintiff any ground for objection because the particular regulation is limited to dentists and is not extended to other professional classes. The State was not bound to deal alike with all these classes, or to strike at all evils at the same time or in the same way. It could deal with the different professions according to the needs of the public in relation to each."

Clarke v. *Deckebach*, 274 U. S. 392 (1927). (Upheld a Cincinnati ordinance prohibiting the issuance *to aliens* of licenses for pool and billiard rooms.)

Dillingham v. *McLaughlin*, 264 U. S. 370 (1924). (Upheld a state statute forbidding any person, *except a corporation*, from engaging in the business of receiving deposits or payments of money in installments of less than $500 for mutual loan, savings or investment purposes.)

Patsone v. *Pennsylvania*, 232 U. S. 138 (1914). (Upheld a Pennsylvania statute making it unlawful for an *unnaturalized foreign born resident* to kill any wild bird or animal except in self-defense.)

POINT IV

The statute does not violate the prohibition against the impairment of the obligation of contracts.

The plaintiff has also contended in his complaint that the Kansas statute impaired the obligation of contracts entered into by him with debtors and therefore was in violation of Article I, Section 10, of the United States Constitution. Again, neither the majority opinion nor the minority opinion below paid any attention to this contention. It obviously is unsound under the circumstances of this case. Nothing is better settled than that, if a state legislature, having reasonably concluded that there are evils to be dealt with under the police power of the state, enacts a statute based on exercise of such police power which enactment is permissible under the due process clause of the Fourteenth Amendment, then any impairment of the obligation of contracts incident to the exercise of such police power cannot be permitted to invalidate the statute.

In *Manigault* v. *Springs*, 199 U. S. 473 (1905), the Court, through Mr. Justice Brown, said (p. 480):

> "It is the settled law of this court that the interdiction of statutes impairing the obligation of contracts does not prevent the State from exercising such powers as are vested in it for the promotion of the common weal, or are necessary for the general good of the public, though contracts previously entered into between individuals may thereby be affected. This power, which in its various ramifications is known as the police power, is an exercise of the sovereign right of the Government to protect the lives, health, morals, comfort and general wel-

> fare of the people, and is paramount to any rights under contracts between individuals. Familiar instances of this are, where parties enter into contracts, perfectly lawful at the time, to sell liquor, operate a brewery or distillery, or carry on a lottery, all of which are subject to impairment by a change of policy on the part of the State, prohibiting the establishment or continuance of such traffic;—in other words, that parties by entering into contracts may not estop the legislature from enacting laws intended for the public good."

Again, in *Union Dry Goods Co.* v. *Georgia P. S. Corp.*, 248 U. S. 372 (1919), the Court, through Mr. Justice Clarke, said (p. 375):

> "That private contract rights must yield to the public welfare, where the latter is appropriately declared and defined and the two conflict, has been often decided by this court."

In *Semler* v. *Oregon State Board of Dental Examiners*, 294 U. S. 608 (1935), the Court, through Mr. Chief Justice Hughes, said (p. 610):

> "Plaintiff is not entitled to complain of interference with the contracts he describes, if the regulation of his conduct as a dentist is not an unreasonable exercise of the protective power of the State. His contracts were necessarily subject to that authority. *Rast* v. *Van Deman & Lewis Co.*, 240 U. S. 342, 363; *Union Dry Goods Co.* v. *Georgia Public Service Comm'n*, 248 U. S. 372, 375, 376; *Sproles* v. *Binford*, 286 U. S. 374, 391; *Stephenson* v. *Binford*, 287 U. S. 251, 276."

To similar effect is *Lincoln Federal Labor Union* v. *Northwestern Iron & Metal Co.*, 335 U. S. 525, 531-2 (1949).

POINT V

The statute is a proper control of an activity which constitutes, or is akin to, the unlawful practice of the law.

The Kansas statute is supported by another independent ground, that is that it regulates activities which are akin to the practice of the law if not actually the practice of the law itself. As pointed out above, three jurisdictions (including Quebec) have passed statutes expressly limiting the activities to members of the Bar as a part of the practice of the law. Such a statute of Massachusetts was challenged and upheld by the Supreme Judicial Court. *Home Budget Service* v. *Boston Bar Association*, 335 Mass. 228, 139 N. E. 2d 387 (1957). The activity of debt adjusting or debt pooling as described by the court in that case is entirely similar to the activity described in the Kansas statute and the court found that it constituted the practice of the law. The case has such an important bearing on this phase of the present case that the key paragraph from the opinion of the Court by Mr. Chief Justice Wilkins (139 N. E. 2d, at p. 390) appears below:

> "The conduct of the plaintiffs presents features of the practice of law, and viewed as a whole amounts substantially to that. An important difference between their conduct and that of lawyers is in the inception of the relationship, which arises in a manner not permitted to the legal profession. The distressed debtor unable to look out for his financial affairs is importuned through the public press to engage for a consideration the services of a skilled handler. If he responds, there then comes into being a basic relationship of trust and confidence. To the hired negotiator the debtor makes a complete

disclosure of his financial secrets, his income, and an account of his indebtedness to the last detail. Entrusted with such information, the debt pooler evolves a program which it advises the debtor to accept as one which under its administration might free him from financial embarrassment. Authorized in writing, the debt pooler enters into direct negotiation at the sources of the debtor's distress, dealing indiscriminately with creditors or their attorneys, undeterred by judgments, pending suits, or attachments. Indeed the greater the pressure, legal and otherwise, the greater the percentage of the entrusted fund the debt pooler will in its own discretion allocate to the reduction of a given claim. In a situation of insolvency—for the debtor is unable to pay his debts as they mature—the debt pooler is engaged to develop and carry out a series of compromises, which, irrespective of litigation, will ward off bankruptcy. The antagonists may be members of the bar subject to the ethical standards and discipline of their profession. The plaintiffs, according to their own contention, are not subject to similar regulation, because they are business men engaged in arm's length dealings in the commercial arena. That the debt pooler neither enters the court room nor prepares legal documents does not save its conduct from classification as the practice of law. Nor is there escape in the fact that it does not advise as to the validity of claims; for, quite to the contrary, its omission to do so may be a surrender to some demands which a member of the bar perhaps ought to question and advise the debtor to contest. The debt pooler's plan and its administration thus exclude the debtor from skilled professional legal advice. So, where there is a conditional sale contract, the creditor may be paid, even in full, notwithstanding that there may have been no compliance with the applicable statutes. In this field

> the rules of law are most stringent and the condition of the sale may be lost because of some departure in the contract from the prescribed statutory language."

The Kansas courts have passed upon similar activities and held them to be a phase of the practice of the law. As a corollary they have held that they could be prohibited to laymen without violation of the Fourteenth Amendment and Section 10 of Article I of the Constitution. *Depew* v. *Wichita Association of Credit Men*, 142 Kan. 403, 49 P. 2d 1041 (1935), *cert. denied*, 297 U. S. 710 (1936).

In fact plaintiff debt adjuster was in effect held by a Kansas court to be conducting the unauthorized practice of the law in February 1961 (R. 124-5). In that case the same plaintiff sued to enjoin a former employee from working for another in a similar type of business. In the course of the case the Court held that the plaintiff did not come into Court with clean hands, saying (R. 125):

> "In addition to that I am of the opinion that the plaintiff's business as conducted here in Wichita smacks of the unauthorized practice of law, and for these reasons the demurrer to the evidence will be sustained,"

and again,

> "Therefore I am of the opinion that this plaintiff's conduct of business in the City of Wichita is bordering on the unlawful practice of law and that he is not entitled to come into this community and practice law."

Of interest in this connection is *McCloskey* v. *Tobin*, 252 U. S. 107 (1920) where this Court upheld a Texas

statute which prohibited laymen from soliciting employment to prosecute, defend, present or collect any claim. The statute was attacked on the ground that the prohibition of this business violated the Fourteenth Amendment. The Court, through Mr. Justice Brandeis, held that the statute constituted regulation rather than prohibition and continued (p. 108):

> "Regulation which aims to bring the conduct of the business into harmony with ethical practice of the legal profession, to which it is necessarily related, is obviously reasonable."

Similarly, to regulate debt adjusting, an activity so closely related to the practice of the law, by limiting this activity to lawyers or, to put it another way, to prohibit this activity except as performed as part of the practice of the law, is the exercise by the Legislature of a power which, as was held in the *McCloskey* case, does not violate the Fourteenth Amendment.

Conclusion

Accordingly, the Kansas statute should be upheld on each of two grounds. One, as the proper exercise of the police power to correct and guard against evils reasonably known to or assumed by the legislature; the other,

as the proper regulation of an activity constituting, or akin to, the practice of the law.

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Respectfully submitted,

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APPENDIX

NATIONAL BETTER BUSINESS BUREAU, INC.
405 Lexington Avenue, New York 17, N. Y.

Affiliated with Local Better Business Bureaus from Coast to Coast

July, 1955

DEBT ADJUSTERS—BOON OR BURDEN?!

Unregulated Pro-Rating Companies Are Subject of Many Complaints

Debt adjusters are individuals or companies engaged in the business of pro-rating the income of a debtor to his creditors for a fee or service charge.

Ideally, the service they render to debt-laden members of society would include setting up a budget on a workable basis. It would allocate a definite amount of income to debt retirement purposes, including payment of the adjuster's fee as defined by contract. The adjuster would then prepare a plan for distributing the available income periodically to the various creditors on a pro-rata basis. This would usually require obtaining substantial concessions from some creditors. However, if satisfactory arrangements could be effected, the debtor would make regular payment of the total amount budgeted for debt retirement to the adjuster who would then disburse it to himself and the creditors in accordance with the agreed formula. The ultimate objective would be final emancipation of the family from its debts and the re-establishment of its credit.

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Complaints Accompany Growth

The business is not a new one. Known variously as pro-raters, debt poolers, debt managers, credit counsellors, budget systems, funding agencies, etc., this type of company has functioned in some cities for more than two decades. Within the past year or two, however, their number has multiplied and the geographic scope of their operations has increased at a prodigious rate.

Some operators extend or transfer their activities from one city to another. In February, a Federal grand jury in Chicago indicted several companies and individuals charging fraud by radio advertisement, mail fraud and conspiracy in the operation of a debt adjustment scheme. Two of these individuals were formerly identified with a pro-rata business in Columbus, Ohio, which had been the subject of numerous complaints to the Columbus Better Business Bureau. During the past year, criminal warrants have likewise been issued in Detroit, Michigan against one "budget system" operator who had previously promoted similar businesses in a number of Eastern cities. The charges resulted from numerous complaints to the Detroit Better Business Bureau and the authorities alleging "bait" advertising and failure of this promoter to perform promised debt adjustment services after collecting his fees in advance.

There are debt adjusters who have operated in some communities for many years, free of justified criticism or complaint to the Better Business Bureau. Certainly, it would be unfair to condemn a newcomer solely on the grounds of newness. It is nevertheless true that those who have swarmed into the debt adjustment field recently

have included a large proportion of unscrupulous or incompetent opportunists whose activities have spread misery throughout the land. They have used extravagant and deceptive advertising to claim far more than they were in position to deliver. They have made false promises to persons whom they knew, or should have known, were beyond redemption, credit-wise. They have withheld their own fees from the debtors' payments but have failed promptly to make agreed payments to creditors or to obtain creditors' accession to the pro-rata plan devised. The net result of their activities, in many cases, has been to leave already desperate people more hopelessly mired in debt and litigation than before.

Situation Serious in Many Cities

That these practices do not exist in isolated cases only is indicated by a survey which the National Better Business Bureau recently made of Better Business Bureau experience with pro-raters in forty cities in all sections of the United States. In seven of these cities, pro-raters have been operating, mostly on a limited scale, without serious complaint to the Bureaus. In five others, sufficient time had not elapsed to permit a significant accumulation of customer experience in Bureau files. In the remaining twenty-eight cities, Better Business Bureau experience with pro-raters has been, on the whole, unfavorable. Most of the larger cities are included in this category and, in more than half, complaints have increased so rapidly within the past year as to create serious problems.

It should not be inferred that every pro-rater in each of these cities has been the subject of justified criticism,

but the tactics employed by a majority of the pro-raters have made the complaint picture so black that some Bureaus have been forced to the conclusion that continued uncontrolled operation of these services in their communities would not be in the public interest.

Misleading Advertisements

Many complaints have their inception in printed or broadcast advertising claims such as "Forget Your Debts," "Rid yourself of the worries and troubles of all your creditors," "Pay Us What You Can Afford," and similar representations calculated falsely to imply that, once the debt adjustment company is employed, the debtor has no further responsibility or obligation to his creditors.

Other advertising statements—"Bills Paid For You," "We Pay Them For You," "Do you need financial assistance and have no collateral?", "Pay your bills without borrowing with single payment," etc.—have had the capacity to deceive as to the true and limited service which the debt adjuster can offer. Some advertising has misled debtors to believe that they can get a loan or credit which the pro-rater will use to pay off all their debts. The Cleveland Better Business Bureau reports the case of one company using the word "Finance" as part of its title. Some debt adjustment services have even advertised in classified columns under the heading of "Loans." Of course, the pro-rater performs no such function, a truth which some complainants have not discovered until after they have signed agreements which they did not understand, and paid fees for non-existent loans.

Appendix

Limitations of Service

At best, the pro-rater offers a means whereby an individual may retire his total indebtedness, although automatically increased to the extent of the pro-rater's fees, in regular amounts over a period of time which will be consistent with his capacity to pay. The complete success of such an expedient would depend upon the honesty of the pro-rater and his qualifications to analyze his client's financial and budgetary problems, the character of the client and his ability to carry through on the agreement reached, and the willingness of creditors to accept proffered plans for reduced or extended payments, among other factors. The experience of Better Business Bureaus suggests that the proportion of cases in which these circumstances ideally co-exist may be very small.

Taking All Comers

Advertisements of some debt adjustment companies have implied an ability to solve the problems of any or all debt ridden persons regardless of their circumstances, character or reputation.

On the contrary, it is generally recognized by informed sources that the proportion of over-indebted persons who can be helped by a debt adjustment service is limited. A mid-west firm which has operated without complaint to the local Better Business Bureau for many years, has advised NBBB that it finds it necessary to turn down six out of every ten applications, "mainly because of (1) a desire to keep some item that is entirely out of proportion, such as an expensive automobile or other luxury item that could be turned back or, (2) reduced income to

the point where it barely does more than cover the living budget or, (3) lack of the feeling that they are in serious trouble and determination to live on a meager budget to pull themselves out." A west coast organization, whose record is equally free of complaint, has stated that it will accept as clients only those over-indebted persons whose income allows monies to be applied toward the liquidation of their obligations over an extended period of time. This organization takes the position that no pro-rate office has the moral right to accept persons who can pay off their obligations by liquidating assets or by securing a loan, or those whose earnings are currently insufficient to do more than meet barest living expenses regardless of the nature of their debts.

It has been the experience of many Better Business Bureaus that there are other pro-raters who do not concern themselves with the fitness of applicants for service. In many cases, the only test applied appears to have been the applicant's ability to pay the debt adjuster's fee.

Agreements Favor Pro-Raters

"No interest. No co-signers. No security needed. No reference check," is an advertising theme employed by many pro-raters. What is not disclosed is that while interest is not charged, there are substantial service charges, often as high as 35% of total indebtedness, added to the debtor's already overwhelming financial burden. Nor is it disclosed that references, co-signers and security are not required because the debt pooling company assumes no financial risk.

Customarily, the debtor is induced to sign a contract legally binding on him. If, because of non-fulfillment

of promises or other cause of dissatisfaction, the disillusioned client seeks to withdraw from a pro-rating plan, he frequently finds that he can do so only at the sacrifice of most, if not all, of the money that he has paid in. He may even face supplementary collection proceedings by the pro-rater. Many such complainants do not have a copy of the agreement that they signed, but investigation by a Better Business Bureau has generally developed that the document is weighted in favor of the pro-rater's receiving the full amount of his fees at the expense of the client and creditors. There is no uniformity in the amount of fees charged by debt adjustment companies or in the method of their exaction. The same company may charge different rates to different clients. In many cases, however, the pro-rater demands the full amount of fees contemplated for the entire life of the agreement, regardless of how long it may be in effect.

Generally, the fee is based on a percentage of the client's total indebtedness which may be augmented by "bookkeeping charges" based on the number of accounts involved. Total charges may amount to from 10% to 35%, or more, of the total indebtedness. They may be considerably more than what prospective clients may anticipate. A New York company, for example, has represented that its fees are 10% of the total indebtedness. An analysis by the Better Business Bureau of New York City of complaints from dissatisfied clients who withdraw from the plan showed that, to these people, charges actually ranged from 16% to 58%.

Piling Debt on Debt

The agreement has sometimes permitted the pro-rater to deduct all or most of his fee from the client's initial

payments. In other cases, a percentage is to be deducted from each payment during the life of the agreement, but, under these circumstances, some pro-raters have set up "reserve funds" by the expedient of postponing payments to creditors. If a client cancels the agreement before it has run its course, the pro-rater applies the "reserve" toward the satisfaction of the total fees he would have collected had the agreement been completed. If sufficient funds are not on hand for this purpose, the client is presented with a bill for the balance. If he fails to pay, the debt adjuster may institute legal proceedings to collect. There is the example of an Ohio company which induced its clients to sign *cognovit* notes for the full amount of its fees. Such notes are, in effect, a confession of judgment and the Better Business Bureau of Akron recently reported that 21 judgments, totalling $1,896.83, had been taken against one debt adjuster's clients who had signed such notes. Similar judgments totalling $497.13 were reported as to five customers of another debt pooling firm. In many cases, where judgments are taken, the holder of the note may garnishee the debtor's wages.

There is a strong suspicion that some pro-raters so conduct their operations as deliberately to encourage clients to withdraw from agreements during the early life thereof. In such cases, the unfortunate client discovers that, at considerable expense to himself, he has not only failed to improve his position *vis a vis* his creditors, but has acquired a new creditor, i.e., the pro-rater.

Relation to Creditors Misrepresented

Many complaints have arisen from sales representations in advertising and at interviews calculated to lead the

debtor to believe that all of the sales credit organizations, banks, loan companies and others to whom he is indebted will automatically agree to whatever plan for payment the pro-rater may devise. The Boston Better Business Bureau, which has pioneered in educating the public on this subject, has pointed out that creditors are under no requirement so to soften the contractual obligations of their debtors and many creditors decline to accept agreements offered by debt adjustment companies.

These facts are not disclosed to prospective customers by the unscrupulous debt adjuster. It is not explained that some creditors, whether accepting the pro-rata arrangement or not, may add additional finance or interest charges, if their accounts are not paid according to the original terms. If legal action has been or is instituted by a creditor against a debtor, only an attorney can provide legal service, if required. A debt adjustment plan does not preclude nor prevent a creditor from taking his usual action to collect, including legal action.

The St. Louis Survey

In February, 1955, the St. Louis Better Business Bureau published the results of a questionnaire to several hundreds of its members in those fields of business most likely to be involved in any attempt by debt adjusters to represent creditors of business firms. Replies, of which 60% were from retail merchants selling on charge or installment plan, and 40% from banks, loan companies and sales finance and discount companies, are tabulated as follows:

	Yes	*No*
Do Debt Adjusters Serve a Useful Purpose?	10 %	90 %
Do You Accept Agreements From Debt Adjusters?	30 %	70 %
Do Debt Adjusters Pay Promptly?	12½%	87½%
Do Debt Adjusters Usually Pay Off the Entire Amount?	0	100 %
Are Clients Excessively Debt Ridden?	67 %	33 %

Returns from another questionnaire distributed by the Memphis Better Business Bureau indicated that approximately the same situation existed in that city. Recently, the Better Business Bureau of Baton Rouge, La., surveyed the principal firms doing an installment business in its area and discovered that less than 10% had any working arrangement with the debt adjustment company operating in that city.

In its bulletin, the St. Louis Bureau pointed out that respondents to its questionnaire did not rate all pro-raters in that city uniformly as to reliability; based on past experience, the creditors might negotiate more readily with a few of the existing debt adjustment companies than they would with others. However, the overall picture presented by the above tabulation is not such as to justify confidence in the employment of pro-raters generally as a means of extricating excessively debt-ridden persons from their financial difficulties.

Misery Compounded

Having been led to believe that through employment of a pro-rater, they had solved all problems relating to

their excessive accumulation of debts, some clients are encouraged to ignore direct demands for payment by creditors. Complainants to Better Business Bureaus include many whose sojourn in such a fool's paradise has been interrupted by the intrusion of lawsuits, garnishee proceedings, repossessions, or other legal steps taken by creditors who have lost patience. Similar denouements have sometimes followed failure of the pro-rater to make prompt payments to creditors as agreed, even though the client has faithfully met his obligations to the debt adjustment company.

Some short-lived debt adjustment companies have closed their doors after paying only a fraction of the amount collected to creditors, leaving their clients in worse financial straits than before. The Rochester Better Business Bureau reports a typical case where a now defunct pro-rating company collected $214.00 from one client, but made a lone payment of only $38.00 to a single creditor. If the operators are not bonded and leave no assets behind them, there is little that can be done for the victims in these cases.

Alternatives Available

There are many, including some Better Business Bureaus, who believe that there is no need or economic justification for the existence of the pro-rater, that he does not offer a service of genuine value to debtor and creditor, or that his functions are, or could be, performed more satisfactorily by some other kind of agency. These critics point out that there is much that the debtor can do for himself and that, in many cities, family welfare agencies, Legal Aid Societies and retail credit bureaus

are willing to assume the burden of debt adjustment for the deserving debtor at little or no expense to him.

Under an Ohio law, a debtor can set up a trusteeship through a municipal court which will pro-rate a portion of his income to his debtors at nominal cost. A recent Wisconsin statute enables wage earners to amortize their debts through the state courts. Chapter XIII of the Federal Bankruptcy Act permits wage earners earning less than $5,000 a year to establish trusteeships for the liquidation of their debts, without resort to bankruptcy, over a period of three years, if necessary. Nearly 10,000 such proceedings were filed during 1954.

Lack of Regulation

In Wisconsin, there is a licensing law supplemented by rules and regulations governing debt adjustment companies, only one of which operates in that state. Minnesota also has a licensing law. A recent Maine statute prohibits anyone other than an attorney from engaging in this business. In Pennsylvania, the courts have construed the collection agency law so as to prohibit debt adjusters from taking fees from debtors; hence, there are no pro-rate companies in Pennsylvania. So far as NBBB is aware, in other jurisdictions, any individual, however ill-qualified may set himself up in business as a pro-rater without any restriction or regulation of his operations whatever.

Legislation has been proposed in other states which would prohibit the operation of a debt adjustment business for profit or which would seek to license and regulate the business. The net effect of some of the proposed laws which NBBB has seen would appear to be to lend dignity

to debt adjusters as state-licensed organizations while affording little real protection to the public. That would seem to be true of any legislation which:

a) would permit unqualified or unscrupulous individuals to accept money from desperately involved debtors without obtaining the agreement of creditors to participate in a workable pro-rate plan;

b) would permit the adjuster to exact exhorbitant fees, openly or by subterfuge;

c) would permit the adjuster to deduct all or a substantial portion of his fees in advance rather than on a pro-rata basis as service is performed; or which

d) did not provide for competent supervision by a state agency adequately financed and staffed.

A National Scandal

In this bulletin, the sole purpose of the National Better Business Bureau has been to draw attention to a situation that is fast approaching a national scandal. We do not suggest that all debt adjusters are charlatans. Better Business Bureaus in those cities where debt adjusters have fulfilled their promises to the public to the satisfaction of debtors and the creditor community alike have not questioned the value of the service which this type of business offers.

It is for the lawmakers to decide whether the activities of pro-rate companies should be prohibited, whether they

should be regulated and whether the states should provide other facilities for performing debt adjustment services, as in Ohio and Wisconsin. Without presuming to decide these questions, the National Better Business Bureau offers the following observations:

In a vocation which offers any individual the opportunity to handle other peoples' money without regard to his reputation, financial responsibility, experience and other qualifications, and without regulation by or accountability to any public agency, the potentiality for evil is great. The evidence is more than ample to support the view that this potential has been realized by an alarmingly high proportion of debt adjusters under existing circumstances.

Appendix

NEW YORK STATE LEGISLATIVE MANUAL, 1956, pp. 451-2

(*Memorandum of Governor Harriman on Bill approved*)

Penal Law, budget planning prohibited
S. I. 44, Pr. 44, Williamson Ch. 31

This bill would amend the Penal Law by making it a misdemeanor to engage in the business of "budget planning." This practice, also known as "debt pooling," or "debt lumping," is defined in the bill as the making of a contract with a particular debtor whereby the debtor agrees to pay a sum of money periodically to the budget planner, who agrees to distribute it among certain specified creditors in accordance with a plan agreed upon, and the debtor further agrees to pay the planner for such services. The bill exempts members of the Bar of this State and does not apply to existing contracts. I have been informed by the Better Business Bureau of New York City "that there has been substantial justified complaint about the practices of some of the companies engaged in budget planning". The Attorney General reports that debt consultants lure the financially distressed by false and deceptive advertising; that they charge excessive fees; and that they derive the bulk of their revenue from the poorly educated and the people in the lower income groups.

It appears that these practices are so common and widespread in the area affected, that the only feasible way to control them is by prohibiting this type of business with the exception already noted.

Appendix

There is no absolute right to engage in a business that conflicts with the public interest. In my opinion "budget planning", as defined in this bill, is such a business.

This bill has the approval of the Better Business Bureau, United Neighborhood Houses, New York State Citizens Council, National Legal Aid Association, Brooklyn Bureau of Social Service, Conference on Personal Finance Law, The Empire State Chamber of Commerce, The New York State Bar Association, the Special Assistant to the Governor on Consumer Problems, the Banking Department and many other reliable organizations.

AFL-CIO

Statement on Debt Adjustment Business

The debt adjustment or debt pooling business involves a procedure whereby an adjuster, without putting up any money of his own, takes regular deposits from a debtor with the understanding that he will contact the debtor's creditors and try to work out an arrangement with them for paying his bills. The type of arrangement has proven, in many cases, to be an abusive scheme whereby the debtor has been deceived and overcharged and his funds subjected to misappropriation.

The debt adjuster has frequently imposed a heavy economic burden on the already overloaded debtor by charging fees of 25 per cent or more, and frequently the debtor receives no effective relief because his property is seized or his salary attached notwithstanding his announced plan to pro-rate his income among his creditors.

However, even the best intentioned and most extensively regulated pro-rater is not in a position to render effective relief without the consent of the creditors.

Moreover, budget planning, advice and guidance is available through the consumer counselling program of the AFL-CIO Community Service Activities and other non-profit agencies and, in addition, overburdened debtors may obtain loans to consolidate debts through credit unions, small loan companies and other credit agencies together with free budget counselling and advice.

The AFL-CIO, therefore, is of the view that the debt adjustment business, regulated or unregulated, is not economically or socially desirable as a commercial activity and should be eliminated.

Approved AFL-CIO Executive Council
Bal Harbor, Fla.
February 21, 1961

Certificate of Service

I, Wilkie Bushby, one of the attorneys for National Better Business Bureau, Inc., as *amicus curiae* herein, and a member of the Bar of the Supreme Court of the United States, hereby certify that on the 23rd day of January 1963 I served copies of the foregoing motion for leave to file the brief attached thereto for the *amicus curiae*, pursuant to Rule 33 of the Revised Rules of the Supreme Court, by causing copies thereof to be deposited in the United States Post Office, with airmail postage prepaid, addressed to appellant, William M. Ferguson, Attorney General for the State of Kansas, at Topeka, Kansas, to appellant Keith Sanborn, County Attorney for the County of Sedgwick, State of Kansas, at the Courthouse, Wichita, Kansas and to counsel of record for the appellee, Lawrence Weigand, c/o Weigand, Curfman, Brainerd, Harris and Kaufman, 830 First National Bank Building, Wichita 2, Kansas.

Wilkie Bushby,
Attorney for applicant amicus curiae,
National Better Business Bureau, Inc.

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IN THE

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1962.

No. 111.

WILLIAM M. FERGUSON, Attorney General for the State of Kansas, and KEITH SANBORN, County Attorney for the County of Sedgwick, State of Kansas,
Appellants,

vs.

FRANK C. SCRUPA, d/b/a CREDIT ADVISORS,
Appellee.

ON APPEAL FROM THE UNITED STATES DISTRICT COURT FOR THE DISTRICT OF KANSAS.

BRIEF OF APPELLEE.

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IN THE

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Appellants,

vs.

FRANK C. SCRUPA, d/b/a CREDIT ADVISORS,
Appellee.

ON APPEAL FROM THE UNITED STATES DISTRICT COURT FOR THE DISTRICT OF KANSAS.

BRIEF OF APPELLEE.

This is an appeal from an order of a three-judge federal court reported at 210 F. Supp. 200 (D. Kan. 1961), which order enjoined the Attorney General of the State of Kansas and the County Attorney of Sedgwick County from

enforcing an unreasonable and arbitrary statute which prohibited the Appellee, a Nebraska citizen, from carrying on a lawful business in Kansas.

STATUTE AND CONSTITUTIONAL PROVISIONS INVOLVED.

The statute, Senate Bill 366, Session Laws of 1961, Chapter 190, page 378, now found without title in Kansas General Statutes, 1961 Supp., 21-2464, page 461, which the court held constituted an improper prohibition of a lawful business, reads as follows:

"AN ACT CONCERNING THE BUSINESS OF DEBT ADJUSTING; MAKING CERTAIN ACTS UNLAWFUL AND PRESCRIBING PENALTIES THEREFOR.

"BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF KANSAS:

"SECTION 1. For the purpose of this act, 'debt adjusting' means the making of a contract, express, or implied with a particular debtor whereby the debtor agrees to pay a certain amount of money periodically to the person engaged in the debt adjusting business who shall for a consideration distribute the same among certain specified creditors in accordance with a plan agreed upon. Whoever engages in the business of debt adjusting shall be guilty of a misdemeanor and upon conviction thereof shall be punished by a fine of not more than five hundred dollars ($500), or by imprisonment in the county jail not exceeding six (6) months, or by both such fine and imprisonment; PROVIDED, That the provisions of this act shall not apply to those situations involving debt adjusting as herein defined incurred incidentally in the lawful practice of law in this state.

Sec. 2. This act shall take effect and be in force from and after its publication in the statute book." (Statute published 6-30-61).

Article 2, Section 16 of the Kansas Constitution, G.S. 1949, Preface, Page XLVIII, provides:

> "No bill shall contain more than one subject, which shall be clearly expressed in its title, and no law shall be revived or amended, unless the new act contain the entire act revived or the section or sections amended, and the section or sections so amended shall be repealed." (Article 2, Section 16).

Article I, Section 10 of the Constitution of the United States, provides as follows:

> "Sec. 10. *Limitations on states.* No state shall enter into any Treaty, Alliance, or Confederation; grant Letters of Marque and Reprisal; coin Money; emit Bills of Credit; make any Thing but gold and silver Coin a tender in Payment of Debts; pass any Bill of Attainder, *ex post facto* Law, or Law impairing the Obligation of Contracts, or grant any Title of Nobility."

Section 1 of the Fourteenth Amendment of the United States Constitution provides as follows:

> "No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws."

Section 1 of the Bill of Rights of the Constitution of the State of Kansas, G.S. 1949, Preface, Page XXXVIII, provides as follows:

> "1. *Equal rights.* All men are possessed of equal and inalienable natural rights, among which are life, liberty, and the pursuit of happiness."

Section 17 of the Bill of Rights of the Constitution of the State of Kansas, G.S. 1949, Preface, Page XLIII, provides as follows:

> "17. *Property rights of citizens and aliens.* No distinction shall ever be made between citizens of the state of Kansas and the citizens of other states and territories of the United States in reference to the purchase, enjoyment or descent of property. The rights of aliens in reference to the purchase, enjoyment or descent of property may be regulated by law."

THE QUESTIONS PRESENTED FOR REVIEW.

I.

Did Senate Bill 366, Session Laws of 1961, Chapter 190, Page 378, concern or deal with the practice of law or a definition of same, partial or otherwise, or exempt lawyers from an otherwise absolute prohibition of certain acts, in violation of the Kansas constitution, Article 2, Section 16, and thus constitute a denial to the Appellee of the equal protection of the laws within the meaning of the 14th Amendment of the Constitution of the United States?

II.

Does the subject matter of Senate Bill 366, Session Laws of 1961, Chapter 190, Page 378, have the effect of practically prohibiting an otherwise lawful activity and thus constitute an arbitrary and unreasonable prohibition of a lawful business, rather than a reasonable regulation of same?

III.

Does the presumption of validity attach to the enactment of a state statute which is practically a verbatim

adoption of another state's act, which prior to adoption in Kansas was adjudicated to be unconstitutional?

IV.

Since the pronouncement of this court in *Adams* v. *Tanner* was adopted as late as 1960 by the Kansas Supreme Court as a correct interpretation of a test to determine the constitutionality of a Kansas statute did not the trial court correctly apply that rule to the law in question?

A CONCISE STATEMENT OF THE CASE.

The Appellants, in attempting to characterize as a racket what the trial court on evidence found to be a lawful business, refer to undocumented, irresponsible, non-admitted magazine articles and other hearsay and self-serving matters but the trial court's finding was predicated on the specific wording of the statute (R. 127-130) on appellee's undisputed evidence. We submit that Appellants in their brief have chosen to ignore the material evidence in this case, to wit:

Appellee's business is operated in both Omaha and Wichita under the name "Credit Advisors" and the nature of the business is financial management of people who are having trouble with consumer debt. Appellee works out a budgeting program for them and attempts to help them out over a period of time (R. 9). It is correct to say that in Appellee's business he makes contracts with debtors whereby they agree to pay Appellee (R. 9) a set amount of money periodically which, for a consideration, Appellee distributes among certain specified creditors in accordance with a plan agreed upon with the debtor (R. 10). Plaintiff has spent in excess of Twenty Thousand Dollars in es-

tablishing this business in Kansas and has in force a substantial number of contracts to distribute money as directed by those contractees which involves approximately Fifteen Thousand Dollars per month (R. 10). Appellee's employees are bonded in an amount sufficient to protect debtors and creditors against loss by embezzlement or dishonesty in performing these contracts (R. 11). Appellee's services consist merely of financial advice and a budgeting system (R. 13). Appellee makes a written agreement with a debtor whereby the debtor undertakes to make weekly or monthly deposits with Appellee and then Appellee undertakes to use his best efforts to persuade the creditors to accept the payments according to the plan and if this is successful, Appellee distributes the payments and for his services his compensation is a percentage of the scheduled amount equivalent to between five and nine percent of the total over-all indebtedness (R. 16). There is no charge to come into Appellee's office and talk over a man's problems (R. 81). This business has been carried on by reputable firms in this country for over a quarter of a century and similar businesses are being operated in most of the metropolitan areas of the country (R. 76). Communities have long recognized the need for this type of service and it is sometimes carried on by non-profit organizations where private business does not fill the need (R. 76).

Appellee offers financial budgeting advice only and does not attempt to advise debtors as to any of their legal rights and if there is a question concerning an account or other questions which appear to be of a legal nature it is suggested that the debtor consult an attorney of his own choosing (R. 16, 30 and 82). Appellee does not attempt to compromise or discount the principal amount of indebtedness (R. 29). Appellee testified, and it was admitted in the trial below in response to questions by Judge Huxman,

that the Act in question would put the Appellee out of business in the State of Kansas (R. 67 and 68).

The Court below found as follows: "Kansas, in passing the Act in question [Senate Bill 366, Session Laws of 1961, Chapter 193, Page 378], apparently took it almost verbatim from a similar Pennsylvania statute. The wording of the two acts is almost identical. The superior court of Pennsylvania, in a well-reasoned opinion, declared the Pennsylvania Act unconstitutional" (R. 129). Prior to the adoption of the same by Kansas, the Pennsylvania court held that the enactment of such a statute was an abuse of police power. *Commonwealth* v. *Stone*, 191 Pa. Super. 117, 155 A.2d 453.

It should here be noted, in connection with the application of the National Better Business Bureau to file a brief *amicus curiae* containing unadmitted and undocumented charges of alleged abuses in connection with the business here involved, that the undisputed evidence in this case is that there have been no complaints filed against Appellee with the Better Business Bureau (R. 78).

In this connection the only other state law relating to the subject matter of the Kansas Act was a copy of the Oklahoma statutes, annotated, Title 24, Chapter 1, Section 15, which was offered in evidence by the plaintiff and received by the court (R. 109) as plaintiff's exhibit 1 and is copied at Record 114. It deals with the identical subject matter as the Kansas Act but makes it a criminal offense for a lawyer to engage in the act, even if only incidental to his practice. (See also Ohio Rev. Code 4710.01.)

In the event that the court feels that it can take judicial notice of enactment of other states in the union with respect to the subject matter of this Act, as did the court below (R. 109), we submit this court should find, as did

the court below, that "no statute, aside from the Pennsylvania statute * * * has gone that far". It appears that thirty of the fifty states in the union have not found legislation on this subject necessary. Two states, Massachusetts and Virginia, have declared that the furnishing of advice or services for debtors in connection with any debt-pooling plan for a consideration constitutes the practice of law. Ten states have legislation, limiting by classification the people eligible to engage in the activity without regard to or limitation on the extent of that activity, and have inserted in their acts numerous exemptions, such as in the New Jersey Act, which does not apply to attorneys at law, any person who is in the regular employ of a debtor acting as an adjuster of his employer's debts, any person acting pursuant to any court order and any person who is a creditor of the debtor.

The most common feature of legislation in the states which regulate the business but do not classify those eligible to participate is the requirement of a license and bond and the fixing of charges for the service. Other types of regulation involve the regulation of advertising, keeping of records for inspection, and prohibition of soliciting the sale of insurance policies to the debtor. None, to our knowledge, prohibit the extent to which those eligible by classification may practice the activity except the enactments of Pennsylvania and Kansas, which statutes have been declared unconstitutional.

SUMMARY OF ARGUMENT.

1. The Kansas statute was not a valid exercise of the state's police power.

2. The majority opinion of the three-judge district court was proper, and correctly construed the act in ques-

tion as an unlawful and unreasonable prohibition of a lawful business activity and properly held it to be an unreasonable and unwarranted regulation under the police power.

3. The Kansas statute, if construed as dealing with, applying to, or concerning, regulating or defining the practice of law, violated the Kansas Constitution (Article 2, Section 16), and its enforcement would destroy the Appellee's constitutional rights, deprive him of property without due process of law in violation of the 14th Amendment to the Constitution of the United States and Sections 1 and 17 of the Bill of Rights of the Constitution of the State of Kansas.

4. The court below properly assumed that because there was nothing in the title respecting lawyers, law practice, a definition of the practice of law, or other reference to the unauthorized practice of the law, and correctly interpreted the act as applying only to a lawful activity unrelated to the practice of law and thus an unreasonable and unwarranted prohibition of a lawful business activity.

5. The majority opinion below properly applied the rules of construction and the tests which the Supreme Court of Kansas has said were proper in determining the validity of Kansas enactments.

6. The court below did not rely upon, but did reach the same conclusion as the Court in Pennsylvania (*Commonwealth* v. *Stone*, 191 Pa. Super. 117, 115 A.2d 453 [1959]) which applied the same test of constitutionality as that strictly applied by the Supreme Court of Kansas in the case of *Gilbert* v. *Mathews*, 352 P.2d 58, 186 Kan. 672, and this was the same rule as that announced by this court in the case of *Adams* v. *Tanner*, 244 U.S. 590 (1917).

7. The majority opinion below properly rejected the decision of the New Jersey court in upholding a New Jersey statute (*American Budget Corporation* v. *Furman*, 67 N.J. Super. 134, 170 A.2d 63), properly holding that the New Jersey statute differed in several particulars from the act in question.

8. The rule announced in *Adams* v. *Tanner*, *supra*, has never been overruled and in 1960 was adopted by the Supreme Court of Kansas as a proper test to determine the validity of Kansas legislative enactments.

9. The trial court correctly construed the specific wording of the statute in question and determined that it in effect was designed to be prohibitory in nature rather than a reasonable regulation of an otherwise lawful business activity, the trial court properly adopting the Kansas criterion that a lawful business could not be prohibited but could only be regulated, by the Kansas legislature. (*Gilbert* v. *Mathews*, 352 P.2d 58, 186 Kan. 672.)

10. The court correctly concluded that the act in question was, if not an absolute prohibition, an unreasonable and arbitrary regulation of a lawful business not reasonably adapted to a correction of the claimed abuses purportedly giving rise to the legislation.

11. The statute in question should not carry a presumption of constitutionality despite Appellants' contention to the contrary, for the reason that the act adopted by Kansas was practically verbatim, the same as a Pennsylvania enactment that had previously been declared unconstitutional and for the additional reason that the statute on its face indicated a violation of the test of constitutionality adopted by the Kansas Supreme Court with respect to Kansas statutes shortly prior to its enactment, and this situation is not contemplated by the doctrine enun-

ciated in *Goldblatt* v. *Town of Hempstead*, 369 U.S. 590, with respect to the presumption of validity. Regardless of the applicability of a presumption of constitutionality, the statute in question was clearly shown to be invalid.

ARGUMENT.

I. The Court Below Correctly Interpreted the Act in Question and the Majority Opinion Should Be Sustained.

In construing this act as an unreasonable and arbitrary prohibition of a lawful business activity, the court was constrained by ordinary rules of interpretation and construction of statutes to assume that the Kansas legislature did not violate the Kansas Constitution in passing the enactment and thus concluded that the subject matter of the bill did not deal with that which was omitted from the title, to wit: reference to the unauthorized practice of law; limitations on the practice of law; or limitations on persons engaged in the practice of law. Any other assumption by the court would have compelled them to have declared the enactment invalid and not conforming with the specific requirements and the minimum safeguards of the Kansas Constitution which provides:

> "No bill shall contain more than one subject which shall be clearly expressed in its title."

The court below, comprised of eminent Kansas jurists, were well aware of this constitutional provision and of the strict enforcement of the Kansas constitutional provision which the Kansas Supreme Court had uniformly given to it, and of the rule of construction that they should, if possible, construe a statute so as not to be in conflict with the Constitution of the State where it was enacted.

The result was inevitable. So construed, the activity made criminal by the statute was an otherwise lawful activity, to wit: the making of an agreement to perform services for another person consisting of a distribution of that person's money to the persons to whom he directed it to be distributed, for an agreed compensation. Hence, the lawful activity condemned, though subject to reasonable regulation, could not be arbitrarily restrained or prohibited.

The court below was aware of the decision of the Kansas Supreme Court in *Manor Baking Company* v. *City of Topeka*, 225 P.2d 89, 170 Kan. 292, 298, where the court said:

> "The amendment, if given the force and effect contended for by the city, clearly would be outside of and foreign to the title of the bill, thus rendering the act unconstitutional and void.
>
> "In either event, plaintiff would be entitled to the relief prayed for which was granted by the lower court and its judgment was therefore reaffirmed."

We respectfully submit that this is true in the instant case.

The Kansas Constitution and the construction given it by the Kansas Supreme Court has emphasized the strictness of this requirement, that the subject matter of all Kansas legislation, to be valid, must be clearly expressed in the title. This is illustrated by the decision in the case of *State ex rel.* v. *Kirchner*, [3-8-58] 322 P.2d 759, 182 Kan. 622, where the court invalidated the enactment of a severance tax on oil and gas. In this case the title to the act read:

> "An Act providing for the assessment, levy and collection of a tax upon the gross value of certain products and providing for the disposition of revenues received from such tax; and providing penalties for the violations of the act."

The court at page 625 held the title inadequate and stated:

> "* * * the subject of this act is not clearly expressed in its title. The title merely refers to the levy of 'a tax upon the gross value of certain products'. As to WHAT products are to be taxed, and the NATURE of the tax, the reader is left to his imagination, and resort must be had to the body of the act in order to discover that in reality the subject matter is a PRIVILEGE TAX ON THOSE PERSONS ENGAGING IN SERVING OIL OR GAS. By no stretch of the imagination can it be said the SUBJECT of this act is CLEARLY EXPRESSED in its title. Expediencies of the moment, or the exigencies of a situation—political, economic or otherwise—afford no ground for disregarding the express mandate of the Constitution.
>
> "The title of the act being fatally defective, the entire act is unconstitutional and void." [Emphasis supplied BY THE COURT].

In *State ex rel.* v. *City of Wichita,* (2-20-59) 335 P.2d 786, 184 Kan. 196, the court held that the title to the act referred only to power of cities to "*license* trades, occupations, businesses and professions", and thus, did not properly contain the subject matter of *licensing for revenue* purposes, and declared the act invalid as violative of the Kansas Constitution, Article 2, Section 16. The third syllabus written by the court is as follows:

> "3. STATUTES—*Title of Act—Sufficiency of Expression Subject.* Where the title of an act is not broad enough to include everything contained in the act, that which is not included within the title must be held invalid since courts have no power to enlarge or extend or amplify the title to an act any more than they have to enlarge or diminish or change the act itself."

As late as April 7, 1962, in *School District, Joint No. 71* v. *Throckmorton*, 370 P.2d 89, 189 Kan. 590, at 592, the Supreme Court of Kansas stated with respect to an act providing for the mandatory unification of school districts, and declaring it to be invalid, stated:

> "Section 29 of the act would seem to contain matter not covered in the title of the act since it appears that the unified school districts referred to in Section 29 are districts which are not organized 'by a vote of the people' as the title provides. Thus Article 2, Section 16 of the State Constitution would appear to be violated."

Thus it is clear that the ordinary lawful activity of distributing money for another to designated persons for a consideration is either not the practice of law and wholly unrelated to it, and therefore the prohibition of such activity rather than its regulation is arbitrary, unwarranted and unreasonable; or, on the other hand, if the Act is construed as relating to, affecting and regulating or defining the practice of law it is clearly invalid as a violation of the Kansas Constitution (Art. 2, Sec. 16) and its enforcement against this non-resident would deprive him of his rights under the 14th Amendment to the Constitution of the United States, in either event.

Thus, it cannot be enforced against the plaintiff and be the means for stopping his otherwise lawful activity by the imposition of criminal sanctions without violating the due process clause of the 14th Amendment of the Constitution because the enforcement, in Kansas by Kansas authorities against a non-resident of the state, of a statute which violates the Kansas Constitution, is, we respectfully submit, a violation of the 14th Amendment of the Constitution of the United States and would result in permitting the state to deprive the Appellee of liberty and property

without due process of law and would be a denial to the Appellee of the equal protection of the law of the State of Kansas, to-wit: its Constitution. In *Gilbert* v. *Mathews*, 352 P.2d 58, 186 Kan. 672, at Page 677, it is stated:

> "By constitutional provisions all men are possessed of equal and inalienable natural rights, among which are life, liberty and the pursuit of happiness, *and no distinction shall ever be made between citizens of the State of Kansas and the citizens of other states and territories of the United States in respect to the purchase, enjoyment or descent of property.* (Kansas Constitution, Bill of Rights, §§ 1 and 17.)"

On the other hand, if the statute is construed as having no relationship to the practice of law, then the lawful activity of distributing another's money by agreement to those whom he directs for an agreed consideration is not such an activity that the state can prohibit it or impose such unreasonable restrictions on its exercise as to virtually amount to a prohibition of it, particularly where reasonable regulations would correct any assumed or imagined abuses that might accompany the exercise of the otherwise lawful pursuit of happiness. In *Gilbert* v. *Mathews, supra,* it is stated:

> "The business is affected with a public interest and is subject to reasonable legislative restriction and regulation to prevent abuses and frauds. Requirements for the licensing of auctioneers and auctions as well as other regulations which are reasonable and not wholly arbitrary have long been upheld. *The right to regulate and license the business does not, however, include the right to prohibit it directly OR IN EFFECT, TO ADOPT UNREASONABLE AND UNFAIR REGULATIONS, OR SUCH REGULATIONS AS WOULD BE OPPRESSIVE OR HIGHLY INJURIOUS TO THE BUSINESS.* * * *" (Emphasis supplied).

Appellants have criticized the trial court's majority opinion as [brief of Sanborn, Pages 4, 5] fallaciously assuming that the activity prohibited constitutes a "lawful business". It certainly is clear that the activity defined in the statute is an otherwise lawful activity. Appellants have sought to obscure the evidence of record in this case on which the lower court predicated its opinion (*i. e.*, a lawful business) by the use, in its brief, of voluminous quotations from self-serving publications, news articles, magazines and publications engendered by the "short term loan companies", and such publications as Personal Finance Law Quarterly [Sanborn's brief, Pages 7, 8, 9, 10] in an effort to have this court reach a different conclusion with respect to the character of *the activity defined in the act* and prohibited thereby. We respectfully submit that these self-serving articles are not matters which should receive judicial notice by this court, they were not in the record below, and their use as references in the brief in effect deprive the Appellee of the right of cross-examination and rebuttal, with respect to the nature, extent and frequency, as well as the correctness and accuracy of such articles and publications, especially as they purport to relate to the specific activity defined and prohibited by the Act.

Sanborn further argues [Brief, Page 11] that the Kansas legislature also considered that "debt adjustment" necessarily entailed the practice of law. Again, Sanborn in his brief, Page 15, continues to contend that the Act involves the subject matter of lawyers and law practice. These contentions, if correct, would compel a holding that it was invalid and in violation of the Kansas Constitution (Article 2, Section 16) and thus would entitle Appellee to an affirmance of the order declaring the law invalid and enjoining its enforcement against the Appellee.

While it is true that the majority opinion is predicated upon an assumption that the legislature did not violate the Kansas Constitution because the activity prohibited did not relate to the practice of law, but only concerned a lawful business activity, the conclusion is then inevitable that the Act so construed is unreasonable, unwarranted and a prohibition rather than a regulation and thus a violation, not only of the Kansas Constitution, but also the 14th Amendment of the Constitution of the United States.

THE COURT BELOW APPLIED THE PROPER CRITERIA RESPECTING CONSTITUTIONALITY.

The criteria for determining the validity of state legislation such as this under the 14th Amendment to the Constitution of the United States was pronounced by the Supreme Court of the United States in *Adams* v. *Tanner*, 244 U.S. 590, 37 S. Ct. 662, where this court struck down as unconstitutional a state statute prohibiting the charging of fees by an employment agency. The court there stated at page 664:

> "Because abuses may, and probably do, grow up in connection with this business, is adequate reason for hedging it about by proper regulations, but this is not enough to justify destruction of one's right to follow a distinctively useful calling in an upright way."

Further quoting from *McLean* v. *Arkansas*, 211 U.S. 539, 547, 548, 29 S. Ct. 206, the court states:

> "'It is also true that the police power of the state is not unlimited, and is subject to judicial review, and when exerted in an arbitrary or oppressive manner such laws may be annulled as violative of rights protected by the Constitution.'"

Further quoting from *Murphy* v. *California*, 225 U.S. 623, 628, 32 S. Ct. 697, the court said:

> "'The 14th Amendment protects the citizen in his right to engage in any lawful business, but it does not prevent legislation intended to regulate useful occupations which, because of their nature or location, may prove injurious or offensive to the public. Neither does it prevent a municipality from prohibiting any business which is inherently vicious and harmful. But, between the useful business which may be regulated and the vicious business which can be prohibited lie many nonuseful occupations which may, or may not be harmful to the public, according to local conditions, or the manner in which they are conducted.'"

The Appellants here have suggested that the case of *Adams* v. *Tanner* has been impliedly overruled by this court. We contend that this is not an accurate statement of the present status of the doctrine of *Adams* v. *Tanner*. Later cases have restricted the application of *Adams* v. *Tanner* to cases where a clear showing can be made that a statute in effect prohibits an otherwise lawful business or attempts to regulate that business in an unreasonable, arbitrary or oppressive manner, but those cases have not overruled it.

Later cases following *Adams* v. *Tanner* were *New York Life Insurance* v. *Dodge*, 246 U.S. 357, 38 S. Ct. 337; *Kennington* v. *Palmer*, 255 U.S. 100, 101, 41 S. Ct. 303, 304; *Meyer* v. *State of Nebraska*, 262 U.S. 390, 399, 43 S. Ct. 625, 627; *Weaver* v. *Palmer Bros.*, 270 U.S. 402, 415, 46 S. Ct. 320, 323; *Yu Cong Eng* v. *Trinidad*, 271 U.S. 500, 526-527, 46 S. Ct. 619, 626; *Tyson Bro.-United Theater Ticket Offices* v. *Banton*, 273 U.S. 418, 443, 273 U.S. 418, 432; *Fairmont Creamery Co.* v. *State of Minnesota*, 274 U.S. 1, 9, 47 S. Ct. 506, 508; *State of Washington* v. *Roberge*, 278

U.S. 116, 121, 49 S. Ct. 50, 52; and *Southern Railway Company* v. *Commonwealth of Virginia,* 290 U.S. 190, 196, 54 S. Ct. 148, 150, all of which cases struck down as unconstitutional state statutes held to be prohibitions or unreasonable regulations of lawful activities.

At the same time that this court was continuing to apply the rule of *Adams* v. *Tanner,* it properly upheld the right of the states to enact reasonable regulatory measures. We respectfully submit that the confusion which has arisen with regard to the rule announced in *Adams* v. *Tanner* stems from a citing of *Adams* v. *Tanner* in the dissenting opinions in those cases involving different factual situations which made the rule inapplicable therein. Such cases were *Calhoun* v. *Massie,* 253 U.S. 170, 182, 40 S. Ct. 474, 478, where the majority opinion upheld a state law regulating the amount of compensation which the government would allow to an agent or attorney for service in a government claim matter; *O'Gorman and Young* v. *Hartford Fire Insurance Company,* 282 U.S. 251, 267, 51 S. Ct. 130, 135, where the majority opinion upheld the right of a state to limit an agent's commission on a fire policy to a reasonable amount; also the often cited case of *Nebbia* v. *People of the State of New York,* 291 U.S. 502, 54 S. Ct. 505, where the court upheld the right of the City of New York to control milk prices.

In the Nebbia case, the court pointed out that prior to the enactment, the legislature of the State of New York had made a thorough investigation of the problems involved in fluctuation of milk prices and had taken reasonable steps to regulate with the definite intention of curing the specific evils found by the legislation to exist. We submit that the following excerpt from the majority opinion, 291 U.S. at page 525 and 54 S. Ct. at pages 510-511, reaffirms the Appellee's contention here. It reads:

> "The Fifth Amendment, in the field of federal activity, and the Fourteenth, as respects state action, do not prohibit governmental *regulation* for the public welfare. They merely condition the exertion of the admitted power, by securing that the end shall be accomplished by methods consistent with due process. and the guaranty of due process, as has often been held, demands only that *the law shall not be unreasonable, arbitrary, or capricious, and that the means selected shall have a real and substantial relation to the object sought to be attained.*" [Emphasis supplied].

Subsequent to the Nebbia case, we respectfully submit that in practically all of the instances where state legislation was reviewed by this court and upheld as valid, it involved *regulatory* legislation rather than *prohibitory* and was so characterized by the decisions of this court affirming the same. For example in *Olson* v. *State of Nebraska,* 313 U.S. 236, 61 S. Ct. 862, the court upheld a statute which did not prohibit an employment agency from collecting a fee, as was the case in *Adams* v. *Tanner,* but did fix the maximum compensation which an employment agency might collect dealing with it. This decision, we submit, is consistent with *Adams* v. *Tanner* and although there was reference to the Tanner case in the decision in *Lincoln Federal Labor Union* v. *Northwestern I. & M. Co.,* 335 U.S. 525, 69 S. Ct. 251, 256, neither it nor the Olson decision overruled or destroyed the holding in *Adams* v. *Tanner.* Subsequently, the decision in *Breard* v. *City of Alexandria,* 341 U.S. 622, 71 S. Ct. 920, distinguished and thus in effect recognized the continued validity of, and did not contradict, the rule announced in *Adams* v. *Tanner,* the court stating at page 927:

> "Decisions such as Leibmann and Tanner, supra, invalidating legislative actions, are hardly in point here."

The Attorney General of the State of Kansas and the County Attorney of Sedgwick County, Kansas, Appellants herein, in contending that *Adams* v. *Tanner, supra,* should not have been applied to the legislation in question, run counter not only to the prior adjudication by the Pennsylvania court in *Commonwealth* v. *Stone,* 191 Pa. Super. 117, 155 A.2d 453, but also to the 1960 decision of the Supreme Court of Kansas, which cited with approval the application of the rule of the Tanner case in its decision in *Gilbert* v. *Mathews,* (186 Kan. 672, at page 681, 52 P.2d 58) which decision invalidated a similar Kansas enactment to the act here in question on the ground that the activity then virtually prohibited was another lawful activity, the court declaring:

> "Abuses may and probably do grow up in connection with the auction business and are adequate reason for regulation, *but this is not enough to justify destruction of one's right to following a distinctly useful calling in an upright way.*"

Unless this court is willing to say that a different test or rule must be applied as a criteria of validity to a Kansas enactment, the court's decision below must be affirmed.

The manipulation without notice of the act in question through the Kansas legislature was an example of the evil which the majority opinion in *Adams* v. *Tanner* contemplated as probable when it said:

> "Skilfully directed agitation might also bring about apparent condemnation of any one of them [distinctly useful callings in an upright way] by the public."

II. The Act in Question Is Not Confined to the Promulgation of Means That Are Reasonably Necessary for the Accomplishment of the Purpose of Regulation and Is Unduly Oppressive upon Appellee Because It Is an Arbitrary and Unreasonable Prohibition of an Ordinarily Lawful Activity Rather Than a Valid Regulation of Same.

We respectfully submit that it is well settled that a state may not, under the guise of protecting the public by regulation, arbitrarily prohibit a person from engaging in the lawful private business or impose unreasonable and unnecessary restrictions upon such an activity or business. *Newstate Ice Co.* v. *Leibmann*, 285 U.S. 262, 278, 52 S. Ct. 371, 374, in which the court said:

> "Plainly, a regulation which has the effect of denying or unreasonably curtailing the common right to engage in a lawful private business, such as that under review, cannot be upheld consistent with the Fourteenth Amendment. Under that amendment, *nothing is more clearly settled* than that it is beyond the power of the state, 'under the guise of protecting the public, arbitrarily to interfere with private business or prohibit lawful occupations *or impose unreasonable and unnecessary restrictions upon them.*' " (Emphasis supplied).

We know of no refutation or contradiction of that rule. See also *J. Burns Baking Co.* v. *Bryan*, 264 U.S. 504, 44 S. Ct. 412, 413; *Weaver* v. *Palmer Bros. Co.*, 270 U.S. 402, 46 S. Ct. 320, 323; *Louis P. Liggett* v. *Baldridge*, 278 U.S. 105, 49 S. Ct. 47, 49 and *Treigle* v. *Acme Homestead Association*, 297 U.S. 189, 52 S. Ct. 408, where the Court also said, at Page 411:

"* * * Though the obligations of contracts must yield to a proper exercise of the police power, and vested rights cannot inhibit the proper exertion of the power, it must be exercised for an end which is in fact public *and the means adopted must be reasonably adapted to the accomplishment of that end and must not be arbitrary or oppressive.*" (Emphasis supplied).

The Kansas Supreme Court, seven months prior to the legislative session in which the Act in question was passed, to-wit, on May 14, 1960, published a decision in the case of *Gilbert* v. *Mathews*, 352 P.2d 58, 186 Kan. 672, page 685, striking down as unconstitutional a law passed by the 1955 Kansas legislature and declared the rule to be:

"In appraising the validity and effect of the statute it is proper to examine and determine what may be required under it pursuant to its provisions. *The inquiry is not confined to what has been done under the act in any particular instance, but what may be done under and by virtue of its authority. The constitutional validity of a law is tested by what may by its authority be done.* (11 Am. Jur., Constitutional Law, § 102, p. 737; *Montana Company* v. *St. Louis Mining & Co.*, 152 U.S. 160, 38 L.Ed. 398, 14 S. Ct. 506; *Burtch* v. *Zeuch*, 200 Iowa 49, 202 N.W. 542, 39 A.L.R. 1349; *Replogle* v. *Little Rock*, 166 Ark. 617, 267 S.W. 353, 36 A.L.R. 1333; and *Abbott* v. *McNutt*, 218 Cal. 225, 22 P.2d 510, 89 A.L.R. 1109).

The Kansas statute in question prevents a bank, a trust company, a collection agency, a secretary, a public stenographer, or other individual or corporation from agreeing with another person that he will receive periodically sums of money for distribution to the persons designated by the person furnishing the money, irrespective of whether that person is a debtor, as is often the case, or whether he is merely an individual who is out of the country on an extended trip or confined, or unable, or unwilling to bother

with periodic distributions of money to persons with whom he has had dealings.

The activity which is prohibited is that of an ordinary agent and the Act virtually prohibits the rendition of a service which is needed in a free society and involves many situations quite common and generally recognized as an integral part of our free enterprise system. For example, a travelling salesman who is away from home a great portion of time, desires to see that his life insurance premium, the payment on the mortgage on his house and the contract for monthly payments on his new refrigerator are not overlooked or delinquent in order to protect his credit standing in the community, but he cannot arrange to deposit a lump sum monthly for distribution through Appellee to facilitate the calendaring and transmittal of the proper sums at the proper times to the proper persons. We respectfully submit that such is clearly a lawful activity, the prohibition of which, rather than its regulation, is prohibited by the safeguards written into the Constitution of the State of Kansas and of the Fourteenth Amendment to the Federal Constitution.

Attached to our brief in the lower court was a contract form prepared by one of the largest banks in Wichita and similar to those in use with some or most of the banks in the metropolitan areas whereby the depositor in the bank authorizes the bank to pay out on drafts, drawn by the depositor's specified creditors each month in payment of such items as insurance premiums, rentals, mortgage payments and existing installment debts and for that service the bank receives a specified amount for each draft so honored. This, we respectfully submit, is forbidden by the Act, and the prohibition is unreasonable, without warrant and has no real or substantial relationship to a protection of the public or other legitimate purpose. An arrangment concerning es-

crow contracts whereby periodic payments are made through a paid escrow agent and by him to the first mortgagee and to the seller who has conveyed the house on an installment sales basis is no longer legal if this enactment is good. The undisputed evidence in this record is that the Appellee has some clients who have no financial problems who avail themselves of his distribution services for their convenience or need (R. 77). All such appears now to be forbidden.

This unreasonable prohibition of an ordinarily lawful activity and practice carefully refrained from forbidding small loan companies, who can draw 3% per month interest in this state, from advertising to a debtor who owes five installment creditors to come in and consolidate his indebtedness in one loan and it permits them to distribute the proceeds of the loan, which is then the money of the debtor, to the various specified creditors. In fact, most of the articles and self-serving declarations alluded to by the appellants in their brief, but not offered in evidence, had their genesis in organizations sponsored or sustained in part by the so-called small or personal loan companies.

The Act does not even forbid the giving of advice, financial or otherwise, respecting the budget requirements of a debtor, nor does it forbid an individual, in connection with a budget problem, to try to arrange for a debtor a composition or compromise of his debts with creditors for a consideration, UNLESS HE ALSO DISTRIBUTES THE DEBTOR'S MONEY PERIODICALLY.

Any careful scrutiny of the provisions of this Act will multiply the instances and the illustrations of the unreasonable, arbitrary and unwarranted prohibition of ordinarily lawful activities. It, therefore, seems indicated that this court should determine, as did the court below, whether a periodic distribution to creditors of a contrac-

tee's money in accordance with his instructions is reprehensible because it is periodic or whether or not it is of such a nature that the activity can be forbidden because the abuse that might arise in connection with it can not be considered to be reasonably susceptible of prevention or correction through reasonable regulations and safeguards —such as licenses, bonds, etc.

If the possibility of fraud in connection with all daily business transactions were ever held to be the basis for permitting a state legislature to forbid it, what economic liberty or pursuit would be left if that power was exercised to the full extent? Could not the legislature, in accordance with the appellant's claim that the public dealing with Appellee could be defrauded, use such a possibility to destroy the right to contract concerning a real estate brokerage business, a ready-to-wear shop's sales, the grocery store, the five and ten cent store, gasoline stations and the sale or rental of automobiles? Is it not inconsistent to say that the Constitution protects citizens in their right to contract and guarantee them freedom in the pursuit of happiness and the right to make a lawful living and yet that it can lawfully restrain them from the precise activity defined in this act, which was an ordinary lawful activity for over a quarter of a century until the Kansas legislature apparently intended to classify it as a crime for all save lawyers, and even then a crime if done as a specialty rather than an incidental matter.

It is true, as the court below affirmed, that the State has the power to regulate this activity, as well as all other activities which can be abused or which affect the public welfare and the court below clearly stated that proper regulations in setting up of standards and qualifications, or perhaps even limiting the business to certain classes of qualified persons, was reasonable and proper if the regula-

tions so framed bore a reasonable relationship to the purpose—that is to protect those in financial distress from exploitation by unscrupulous or dishonest operators; but the Act as passed condemns as Criminal the honest, conscientious person of integrity, who receives and periodically distributes money to designated persons for another if paid for that service.

We respectfully submit such legislation is contrary to the guarantees of both the Kansas and Federal Constitutions. The activity defined and condemned by the statute does not involve a matter affecting the public morals or the health of the public and the restrictions imposed are unusual and unnecessary and bear no reasonable relationship to the objects and purposes sought to be obtained. This court, as late as May 14, 1962, in *Goldblatt* v. *Town of Hempstead, New York*, 369 U.S. 597, 82 S. Ct. 987, at page 990 stated:

> "The question, therefore, narrows to whether the prohibition * * * is a valid exercise of the town's police power. The term 'police power' connotes the time-tested conceptional limit of public encroachment upon private interests. Except for the substitution of the familiar standard of 'reasonableness', this court has generally refrained from announcing any specific criteria. The classic statement of the rule in *Lawton* v. *Steele*, 152 U.S. 133, 137, 14 S. Ct. 499, 501, 38 L. Ed. 385 (1894), *is still valid today*. [Emphasis supplied].
>
> 'To justify the state in * * * interposing its authority in behalf of the public, it must appear—First, that the interests of the public * * * require such interference; and, second, that the means are reasonably necessary for the accomplishment of the purpose, and not unduly oppressive upon individuals.' "

III. In Determining the Question of Reasonableness of Legislation Enacted under the Police Power, Courts Ordinarily Presume the Same to Be Constitutionally Valid, but Where an Almost Identical Enactment Has Previously Been Declared Unconstitutional, the Presumption Should Not Prevail or Exist and the Burden Should Shift.

The cases referred to by this court in the *Goldblatt* v. *Town of Hempstead* decision, *supra*, and those relied upon by the Appellant Ferguson [Brief, page 8] appear to concern legislation which has not been previously adjudicated to be unconstitutional. We believe this situation to be unique and therefore without precedent, and we submit that the Appellants are not justified in asking this court to indulge "every possible presumption in favor of its validity" nor to hold that the burden rests upon Appellee "to establish with convincing clarity that the statute infringes his constitutional rights". This for the reason that legislation almost identical to the act in question here was declared unconstitutional after its enactment in the State of Pennsylvania in the case of *Commonwealth* v. *Stone*, 91 Pa. Super. 117, 155 A.2d 453, prior to the adoption of this almost verbatim legislation by the Kansas legislature.

Even in the absence of that prior adjudication of unconstitutionality, a careful reading of the enactment's provisions clearly discloses its invalidity as an unreasonable prohibition of a lawful business or activity.

Although Appellee knows of no similar precedent, *i. e.*, the adoption of an act previously adjudicated in a sister state to be unconstitutional, situations have arisen where this court has recognized limitations of the area of application of the rules referred to above and contended for by

Appellants (See *e.g. Korematsu* v. *United States*, 323 U.S. 214, 215, 65 S. Ct. 193, 194; also *Ex Parte Mitsuye Endo*, 323 U.S. 283, 65 S. Ct. 208, 217).

We concede that the court here is not concerned with the wisdom of this legislation, but is concerned with the unreasonableness and the capricious and arbitrary character of the enactment which bears no real or substantial relationship to the only lawful objective and purposes which the Kansas legislature was entitled to pursue, to-wit: the regulation of an otherwise lawful acitivity. A state may not "under the guise of protecting the public interest arbitrarily interfere with private business by the use of unusual and unnecessary restrictions upon lawful occupations". *General Motors Corp.* v. *Blevins*, 144 F. Supp. 381.

Not only was this enactment the adoption by Kansas of an act already adjudicated to be unconstitutional, but in addition, the Kansas Supreme Court had, seven months prior thereto, struck down and invalidated a similar attempt to prohibit rather than regulate a similar lawful business in *Gilbert* v. *Mathews*, 352 P.2d 58, 186 Kan. 672. There the lawful business which the Legislature attempted to prohibit rather than regulate, was new goods auction sales. *The Court declared that in Kansas the right to regulate and license a lawful business did not include the right to prohibit "directly or indirectly".*

The prior adjudication of unconstitutionality and the Kansas Supreme Court's ruling as to its limitation of the police power of the legislature to prohibit a lawful activity seems to make the statute in question unconstitutional on its face. We submit that under such circumstances the Appellants were not entitled to have the court below apply any presumption of constitutional validity.

Irrespective of the determination which the court makes of this unique situation, the question of presumption of validity is relatively unimportant as the Act and the evidence in the Court below clearly demonstrates the unconstitutional character of the legislation and establishes the fact that appellee overcame any presumption which might exist, because Appellee established the lawful character of the activity or business affected and thus compelled a finding by the court below that it was a lawful calling or business and the effect of the legislation was to so restrict the activity as to result in a practical prohibition of same.

IV. The Test or Standard by Which the Constitutionality of Kansas Legislation Is to Be Tested Has Been Pronounced and Defined by the Kansas Supreme Court and the Plaintiff, a Non-Resident of the State of Kansas, Is, under the Bill of Rights of the Kansas Constitution, Sections 1 and 17, Entitled to the Equal Protection of the Laws of the State of Kansas.

The court below found, and we submit, it cannot be successfully controverted that the business or activity defined by the statute in question is (1) a business affected with the public interest, and (2) a lawful business activity.

The Supreme Court of Kansas has declared that a business affected with the public interest is subject to reasonable legislative restriction and regulation to prevent abuses and frauds and requirements for licensing as well as other regulations which are reasonable would be upheld, but "the right to regulate and license the business does not, however, include the right to prohibit it directly or in effect to adopt unreasonable and unfair regulations

or such regulations as would be oppressive or highly injurious to the business. (*Gilbert* v. *Mathews*, 352 P.2d 58, 186 Kan. 672, 676.)

This same decision of the Kansas Supreme Court in 1960 further held and determined that while a large discretion is vested in the legislature to determine for itself what is deleterious to health, morals or is inimical to public welfare "it cannot under the guise of the police power, enact unequal, unreasonable and oppressive legislation or that which is in violation of the fundamental law." It was held and stated that the police power of a state, while not susceptible of definition with circumstantial precision, "must be exercised within a limited ambit and is subordinate to constitutional limitations," and that "there is no unrestricted authority to accomplish whatever the public may desire. It is the governmental power of self-protection and permits reasonable regulation of rights and property *in particulars essential to the preservation of the community from injury.*" (page 677). The court held that a law which "places arbitrary and unreasonable limitations, regulations and impositions on the conduct of a lawful business and is designed to be so oppressive and unreasonable that it prohibits the conduct of such lawful business * * * violates the constitution * * * of the State of Kansas." (page 686).

In view of this criteria or standard announced by the Supreme Court of Kansas as the proper test of the validity of Kansas legislation under the provisions of the Kansas Constitution, the court below properly applied this rule to the enactment in question and properly concluded that so applied, the Kansas legislation was invalid and that the enforcement of the same against the plaintiff would deprive him of property and the pursuit of happiness without due process of law within the meaning of the 14th Amendment to the Constitution of the United States.

CONCLUSION.

We respectfully submit for the foregoing reasons, the order and decision of the trial court should be affirmed.

Respectfully submitted,

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